

# **SWAN LAKE ESTATES**

## **FINAL ENVIRONMENTAL IMPACT STATEMENT Kelly Bridge Road Subdivision**

**TOWN OF LIBERTY, SULLIVAN COUNTY, NEW YORK**  
Tax Map Number: Section 44, Block 1, Lots 1 & 8

*Project Sponsor:* AJM at Swan Lake, LLC,  
11 Wendover Drive  
Huntington, New York 11743  
Attention: Mr. Tony Murolo  
(631) 673-6860

*Lead Agency:* New York State Department of Environmental Conservation  
Region 3, Division of Environmental Permits,  
21 South Putt Corners Road, New Paltz, NY 12561-1696  
Attention: Scott Sheeley, Deputy Regional Permit Administrator  
(845) 256-3000

*Prepared By:* TIM MILLER ASSOCIATES, INC.  
10 North Street, Cold Spring, NY 10516  
Attention: Chris Robbins  
(845) 265-4400

*Project Engineer:* WASSON ENGINEERING, PE  
31 North Main Street, Liberty, NY 12574  
Attention: D. Randel Wasson, P.E.  
(845) 292-0010

*Project Attorney:* LAMB and BARNOSKY, LLP  
534 Broadhollow Road, Suite 210, P.O. Box 9034, Melville, NY 11747-9034  
Attention: Frederick Eisenbud, Esq.  
(631) 694-2300

Lead Agency Acceptance Date: \_\_\_\_\_

**January 17, 2008**

**Swan Lake Estates  
Final Environmental Impact Statement  
Town of Liberty, New York**

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## Chapter 1.0

### Introduction

## **1.0 INTRODUCTION**

This Final Environmental Impact Statement (FEIS), prepared pursuant to the State Environmental Quality Review Act (SEQRA), provides responses to agency and public comments received by the lead agency on the Draft Environmental Impact Statement (DEIS) prepared for the Swan Lake Estates project, Town of Liberty, Sullivan County, New York. The FEIS has been prepared in accordance with Section 8-0101, et. seq. of the Environmental Conservation Law and the regulations promulgated by the New York State Department of Environmental Conservation (NYS DEC) thereunder, which appear at 6 NYCRR, Part 617.

The applicant prepared the DEIS in response to a Positive Declaration issued by the NYSDEC. The DEIS scope was established by a scoping outline developed by the NYSDEC, acting as lead agency, in cooperation with all other involved agencies and interested parties. The Scoping Outline was adopted on May 22, 2006.

The DEIS was accepted as complete with respect to its scope by the lead agency on December 22, 2006. The lead agency conducted Public Hearings on the DEIS on February 6, 2007, and maintained an open public comment period for an additional 19 days after the close of the Public Hearing. The accepted scope outlining the information to be covered in the DEIS, the Notice of Draft Environmental Impact Statement Acceptance and Notice of Public Hearing along with the Notice of Complete Application for an Article 24 Freshwater Wetland Permit are provided in Appendix A, SEQRA Documentation, of this FEIS. The FEIS consists of this volume and accompanying drawings and appendices and the DEIS, which is hereby incorporated by reference into this FEIS.

### **1.1 Summary of Proposed Action**

The proposed Swan Lake Estates site is located on the northeast side of Swan Lake, west of Kelly Bridge Road, in the Town of Liberty, Sullivan County. Swan Lake is an approximately 352 acre water body used for a variety of recreational purposes including fishing and boating.

The project site is located on the west side of Kelly Bridge Road east of County Road #142 and northwest of the Kelly Bridge which spans a narrow portion of Swan Lake. It is comprised of two tax lots designated as Section 44, Block 1, Lots 1 and 8, comprising a total of 114.02 acres. The property lies within the Rural Development (RD) zoning district which allows single family detached housing by right.

With the exception of the proposed road which has been cleared and graded, the site is currently undeveloped and vegetated with second growth hardwood and coniferous forest. Two wetlands, classified as a mix of palustrine forested, palustrine scrub shrub and palustrine emergent, fringe Swan Lake on the property. The site also supports large canopy trees, including white pine along the lake shore, which serve as roost trees for nesting bald eagles.

The applicant proposes to subdivide this area into a total of 21 lots. One lot, proposed Lot 13, will remain in common ownership of the Homeowner's Association and will provide a common lake access. The remaining 20 lots will be developed with single-family detached residences. Excluding the common lot, which is proposed to be 2.38 acres, lots will range from 3.00 acres to 8.37 acres in size. Of these 20 lots, 16 will be larger than 5.00 acres.

With lot sizes of 3 acres or more, the plan complies with all requirements of the Town of Liberty Zoning Code. The RD zoning district has a minimum lot size of 60,000 square feet, or approximately 1.4 acres.

Owners of Lots 3 through 12 will have frontage on Swan Lake. These lots will be permitted to have pathways to access the lake shore and private floating docks not to exceed 100 square feet in size. The proposed homes, with the exception of Lot 7, will be setback a minimum of 200 feet from the lake shore.

All proposed lots will be served by individual wells and septic systems.

Lot 13, the common lot, will contain a pavilion, parking area and a path to the lake with a floating dock not to exceed 200 square feet. These facilities will be available for use by the residents of the subdivision and their guests. The Homeowner's Association will own and maintain the common lot and the access road through the subdivision.

Access to the site is from Kelly Bridge Road north of Kelly Bridge at a point approximately 0.4 miles north of its intersection with County Road #142. Kelly Bridge Road can also be accessed from Ferndale Loomis Road roughly 1.6 miles to the northeast of the site.

### **1.2 SEQRA Background**

In accordance with SEQRA, this FEIS provides written responses to substantive and relevant comments on the DEIS received by the lead agency during the public review period, including oral comments made at the Public Hearing. Complete copies of all written comments and oral received on the DEIS and the transcripts of the Public Hearings are provided in Appendix B of this FEIS.

During the course of the DEIS public comment period, the following letters on the DEIS were received from various agencies and interested parties:

<b>Table 1-1 SWAN LAKE ESTATES DEIS COMMENT LETTERS</b>		
<b>Letter #</b>	<b>Author</b>	<b>Date</b>
1	Public Hearing Transcript	2-06-07
2	Nancy Levine	1-20-07
3	Paul Jeanneney & Marilyn Wood	1-22-07
4	Michael Edwards	1-22-07
5	John Parker	1-31-07
6	Suzanne Stylians	2-02-07
7	Terry Hess, Sullivan County Chamber of Commerce	2-06-07
8	Dave Colavito	2-07-07
9	Evan Beck	2-09-07
10	Michael Nastro, Nastro, Inc.	2-08-07
11	Deeny Nathanson	2-06-07
12	Chris Karras	2-13-07
13	Andrew Brower	2-15-07
14	Cynthia Karras	2-17-07
15	Soterios Karras	2-17-07
16	Michael Shanahan	2-18-07
17	Nancy Levine	2-20-07
18	Karen Schneller-McDonald, Hickory Creek Consulting, LLC	2-21-07
19	Lori Malone	2-26-07
20	Jason Tesauro & Erik Kiviat, Hudsonia	2-23-07
21	Paul Edelstein, The Edelsteins, Faeganberg & Brown, LLP	2-23-07
22	Joan Kittredge	2-26-07
23	Joyce Teed	2-23-07
24	Cora Edwards	2-26-07
25	Eli Goldschmidt	2-26-07
26	John Parker	2-26-07
27	Cynthia Karras	2-25-07
28	Cynthia Karras	2-25-07
29	Cynthia Karras	2-25-07

The FEIS is arranged in sections, with comment summaries and responses arranged by subject area similar to the DEIS. A comment summary, in some cases, may incorporate more than one individual comment on the same subject, followed by a response to that comment. The sources of each comment are referenced. The format of the comments and responses is as follows:

**Comment # (Source):** Comment summary text.

**Response #:** Response text.

### **1.3 Bald Eagle Status**

Since the publication of the Swan Lake Estates DEIS, the USFWS has removed the bald eagle (*Haliaeetus leucocephalus*) from the Federal list of threatened and endangered species due to a dramatic rebound in its breeding population while under protection of the Endangered Species Act. It is estimated that the breeding population in the lower 48 states is over 9,700 nesting pairs of eagles, up from a low of 417 pairs documented in 1963. Removal from the Federal List of Endangered and Threatened Wildlife and Plants became effective August 8, 2007. The eagle will continue to be protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Act.

In order to ensure the bald eagle remains off of the threatened and endangered species list, the USFWS has generated the National Bald Eagle Management Guidelines dated May 2007 (copies available on the USFWS website). Protocols for protection of this avian species have been and continue to be focused on the nest tree and surrounding environs. The Management Guidelines, as with past bald eagle management documents, utilizes nest tree protection zones within which activities are restricted.

Chapter 2.0

Description of Proposed Action

## **2.0 PROJECT DESCRIPTION COMMENTS AND RESPONSES**

**Comment 2.0-1 (Letter 15, Soterios Karras, February 17, 2007):** At the February 6<sup>th</sup>, 2007 Legislative Hearing before the Honorable Judge, Mrs. Maria E. Villa, the applicant verbally withdrew the Lake Marie Road Subdivision proposal and thereby segmented the Kelly Bridge Road subdivision portion of his application being reviewed by DEC officials.

The applicant's DEIS does not discuss this withdrawal or the segmenting of the project, although a fax statement dated August 28, 2006 by Mr. Murolo is included in the appendix. Since the DEIS was accepted as complete in December 2006, why did it not include this relevant information? This furthers the inaccuracy of the DEIS.

***Response 2.0-1:** On August 28, 2006, the Applicant (AJM @ Swan Lake Estates, LLC) formally withdrew the submission of the Lake Marie Road project in writing after the property had been sold. A copy of that letter was included in Appendix A, Correspondence, of the DEIS. As it is no longer owned by the Applicant, any future development of that property would not be a segmentation of the existing proposal and review. Should the new owner wish to develop the property, a complete environmental and site review would need to be done at that time.*

**Comment 2.0-2 (Letter 15, Soterios Karras, February 17, 2007):** The applicant specifies on page seven (7) of ten (10), 7.3 Water Quality, Kelly Bridge Road/ Lake Marie Road Subdivision. Final Scoping Document, May 22, 2006, that "the project sites will be served by individual wells and subsurface wastewater disposal systems. As proposed, the estimated total water demand of both development sites is approximately 16,720 gallons per day." The DEIS for the Kelly Bridge Road subdivision never discloses the estimated total water demand for this portion of this application.

The facts presented would lead us to believe that the 16,720 gpd figure provided by the applicant in the Scoping document would be cut in half because the Lake Marie application is dropped, and therefore drop water demand by 8,360 gpd. This is not the case, and the applicant's DEIS needs to be accurate on this point.

***Response 2.0-2:** Water demand for each house is based on the bedroom count of the house. For both the Kelly Bridge Road (i.e. the AJM property) and Lake Marie Road subdivisions, each house was assumed to have a total of four bedrooms. Based on NYS Department of Health Design Standards for new construction, each bedroom will require 110 gallons per day (gpd) of water supply, or 440 gpd for a four bedroom house. The 20 homes in Kelly Bridge would therefore create a demand of 8,800 gpd (6.1 gallons per minute (gpm) average demand). Similarly, the 19 homes originally proposed for the Lake Marie parcel would create a demand of 8,360 gpd (5.8 gpm). The Lake Marie project site has been sold and is no longer a consideration in determining project water demand.*

**Comment 2.0-3 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** The area of disturbance map in the DEIS is not complete. This map should include all areas (including stormwater management facilities) where the existing vegetation is to be removed, and where any grading or soil compaction (by heavy equipment) occurs. All wetlands and all proposed construction should also be

depicted on this same map to enable the planning board to discern the spatial relationship between natural resources and site disturbance.

**Response 2.0-3:** *Maps depicting the site disturbances were submitted as part of site plan packages. Please note that the Planning Board is no longer the lead agency, the NYSDEC has assumed that role in the environmental review process. After review of all submitted documentation including project plans and the record of the Town of Liberty Planning Board, the NYSDEC has concluded that only the potential impact on the bald eagle may be significant. The current drawing record provides the information requested by the commentor in detail sufficient to allow a thorough review of the Proposed Action and its potential impacts.*

**Comment 2.0-4 (Letter 24, Cora Edwards, February 26, 2007):** [The DEIS] states that the lake is used for a variety of purposes, including fishing and boating. What this statement neglects to add is the relative infrequency of recreational use due to the shallowness of the upper lakes (18, as coverage under State Pollution Discharge Elimination System (SPDES), inches to 2 feet in some areas), the un-navigability of the waters due to a covering of chestnut weed on the lake water surface. (Also inspected by DEC staff Bernie Lohman and Officer Templeton in August of 2005). Most of the activity on the lake is by non-residents, including bass fishing tournaments with motorboats sanctioned by the lake owner AJM. Of all the jet skiers and snow mobilers I have seen use the lower lake, put in their recreational vehicles at the Route 55 end of the lake and so not live here. When I have canoed to the "upper lakes" I have never seen more than two rowboats on the lake at any given time in the summer. Over the last two summers, the lake water levels have made the use of motorboats prohibitive as there are many tree stumps in the shallow waters.

**Response 2.0-4:** *Comment noted.*

**Comment 2.0-5 (Letter 24, Cora Edwards, February 26, 2007):** A 'sandy beach' is mentioned in the Homeowners Association by-laws although the site plans do not indicate where sandy beach will be, nor do any permits indicate a 'fill-in' of lake waters as would be required for a 'sandy beach'.

**Response 2.0-5 :** *"Sandy beaches" are not included as part of the Proposed Action as presented for Review under SEQRA and are not part of the Article 24, Freshwater Permit application. Should the Home Owner's Association desire a sandy beach, it would need to be permitted separately by the NYSDEC.*

**Comment 2.0-6 (Letter 24, Cora Edwards, February 26, 2007):** "Owners of lots 3-12". The document suggests that individual homes will have private floating docks. This specific aspect, docks, was brought up to the Town of Liberty Planning Board by R. Wasson in October 2005, after the final approval of the site plan and was rejected by the planning board until all requirements of the DEC and permits had been met.

**Response 2.0-6:** *The Applicant has included the docks as part of the wetland permit applications. The NYSDEC is currently reviewing and evaluating the plans for the docks as part of the permitting process.*

**Comment 2.0-7 (Letter 24, Cora Edwards, February 26, 2007):** Lot #7 is exempted by the minimum 200 foot buffer presumably because the developer does not want to sacrifice having a

house on that lot. However, the “peninsula lot” is a well frequented area for the eagles, and everyone at Swan Lake knows that.

**Response 2.0-7:** *The minimum buffer proposed was 100 feet, not 200 feet as suggested. The Applicant has increased the buffer to 150 feet on the lots closest to the nesting area (Lots 8 through 12). Refer to the attached Wetlands Disturbance Details and Proposed Clearing Limits Drawings where this buffer is depicted.*

**Comment 2.0-8 (Letter 24, Cora Edwards, February 26, 2007):** Increase the town’s housing stock and help satisfy the demand for single family residences in the town of Liberty and northern Sullivan County: According to [www.datplace.org](http://www.datplace.org), Sullivan County has the second highest home owner vacancy rate in New York State.

**Response 2.0-8:** *Comment noted.*

**Comment 2.0-9 (Letter 24, Cora Edwards, February 26, 2007):** “Preserve existing Bald Eagle nesting habitat, wooded and wetland areas and adjacent areas? If that is truly the case, a “Habitat Conservation Plan” should be submitted instead of an inadequate “mitigation plan”.

**Response 2.0-9:** *A mitigation plan is required by the NYSDEC in order to prevent significant impacts from occurring to the nesting eagle pair. The mitigation plan includes habitat preservation and conservation measures to protect important nest and roost habitat as defined by the United States Fish and Wildlife Service (USFWS) in the National Bald Eagle Management Guidelines and by the NYSDEC staff based on their study of this pair of eagles. The mitigation proposed is consistent with the May 2007 National Bald Eagle Management Guidelines and meets all the requirements set forth by NYSDEC staff.*

**Comment 2.0-10 (Letter 24, Cora Edwards, February 26, 2007):** “Increase workforce and pool of civic minded residents, some who may be volunteers in local social services”. The Swan Lake Estates LLC marketing brochures are contradictory on this point, as the “gated community” is presented as a place to disengage from work week pressure. Therefore, without a basis for making a reasoned judgment, these statements should be taken out of a DEIS that is supposed to focus on the potential negative impacts of the subdivision on the eagles habitat.

**Response 2.0-10:** *The adopted scope requires that benefits of the project be identified in the DEIS. Refer to 6NYCRR Part 617.9(b)(5)(i).*

**Comment 2.0-11 (Letter 24, Cora Edwards, February 26, 2007):** Objectives of the applicant: the project responds to a demand for high quality, 4 bedroom housing in the Town of Liberty and Sullivan County. As stated elsewhere, Sullivan County has the second highest homeowner vacancy rate in New York State. Unless there is substantial evidence to the contrary, the statement about demand for this type of housing should be taken out of the document.

**Response 2.0-11:** *The information provided on [dataplace.org](http://dataplace.org) is based on 2000 census data which is now nearly seven years old. There is no evidence provided by the website host that the type of housing proposed by the Applicant, a subset of the overall housing stock which, according the website, includes all housing categories including rental housing, also has such a high vacancy rate. It is the Applicant’s opinion that the niche*

*market for the housing proposed as part of this project will support the 20 homes to be constructed on the project site.*

**Comment 2.0-12 (Letter 24, Cora Edwards, February 26, 2007):** Required list of approvals: Now that changes are proposed to the final subdivision application and site plan approved by the Town of Liberty Planning Board on May 5, 2005, which agency will look at the other potential (and actual) negative impacts caused by this subdivision to the roads, water quality, wetlands, noise, traffic, school, community character, etc.?

**Response 2.0-12:** *The proposed (i.e. draft) scope of the DEIS and the areas to be studied were presented for public review and comment prior to adoption of the Final Scope by the lead agency, as required by SEQRA. The purpose of developing a scoping document within the SEQRA process is to facilitate the development of the EIS by focusing the DEIS document on the specific areas of environmental concern for each specific project proposal, as identified by the Lead Agency and all Involved and Interested Agencies through the process of public review. The Final Scope of the Swan Lake Estates DEIS defines all areas that are required to be examined by the Applicant.*

*The Final Scope for this project also outlines items that need not be addressed within the DEIS, including all items which were determined by the Lead Agency to have no potential for any significant impacts. Section 6.0 of the DEIS lists all of these items. During the DEIS Scoping process these items were determined not to be significantly impacted by the current lead agency (NYSDEC). The Town of Liberty Planning Board arrived at the same conclusion as a result of their review of the Proposed Action under SEQRA.*

*In addition, the project as presented in this FEIS has been modified to reduce the impacts that would have resulted from the development of the plan presented in DEIS and offers additional mitigation and protection measures for the Swan Lake eagles.*

**Comment 2.0-13 (Letter 24, Cora Edwards, February 26, 2007):** Part 1.0 of the Executive Summary of the DEIS document (page 1-1) dated November 30, 2006 states that the applicant has withdrawn the Lake Marie Road Subdivision. That withdrawal occurred on August 2006, according to a fax submitted by AJM and included in the DEIS appendix. Yet, the EAF forms for Kelly Bridge and Lake Marie subdivisions, which are both included in the final DEIS submission, state the requirements of upwards of 16,000 gallons of water per day for both subdivisions. This leads to confusion on the part of the reader as to the actual requirements for just the Kelly Bridge Road subdivision. Is the higher water requirement included so that the guesthouses proposed in the Home Owners Association Covenants and Restriction, but not in the site plan can get by under the radar of the site plan configuration? If each guesthouse allowed under the Housing Associations Covenant and Restrictions is actually built, then there could be 40 homes on a site plan originally planned for 20 homes. The Homeowner's Association Covenants and Restrictions was not submitted to the Town of Liberty Planning Board at the time that the site plan received final approval in May 2005.

**Response 2.0-13:** *Refer to Response 2.0-2. As noted by the commentor, the Lake Marie Road parcel was sold and the application for the project withdrawn. The information for this project remained in the DEIS as the scope was generated prior to the sale of the property and included multiple references to it.*

*All potential impacts related to and resources required for the development of the Lake Marie Road subdivision are no longer relevant. Water usage and wastewater flow are based on the specifics of a particular development and are not allotted to a project and are then available for transfer to another project.*

*The Applicant has added to the deed covenants a prohibition on the construction of guest houses; none can be built. Refer to Appendix C for a copy of the updated covenants.*

**Comment 2.0-14 (Letter 26, John Parker, February 26, 2007):** The EAF submitted to the DEC for Swan Lake Estates did not have a completed Part 2.

***Response 2.0-14:*** *Completion of parts 2 and 3 of the EAF is the responsibility of the SEQR Lead Agency. The DEC prepared parts 2 and 3 of the EAF and they are included in Appendix A of this FEIS.*

## Chapter 3.0

### Existing Setting, Potential Impacts, and Mitigation Measures

### **3.0 EXISTING SETTING, POTENTIAL IMPACTS, AND MITIGATION MEASURES COMMENTS AND RESPONSES**

#### **3.1 Wildlife**

**Comment 3.1-1 (Public Hearing Transcript, February 6, 2007, John Parker):** The other thing we need to talk about briefly is the Endangered Species Act. We should understand three small concepts that are very important. It is 16 USC 1531 and the following sections and the implementing regulations. It's a lot of language, but essentially this is what it means. The law prohibits the taking of a federal listed species -- American Bald Eagle would be one of them, that means no harassment, harming, pursuing, hunting, shooting, wounding, killing, trapping or capturing of these species. What does harm mean? Well, we know because it says; this is what it says: An act which kills or injures wildlife, including significant habitat modification or degradation by significantly impairing essential behavioral patterns including breeding, feeding or sheltering. And harass is defined as well, it's the last section I will talk about. Intentional or a negligent act that creates the likelihood of injury that also can result in endangerment of habitat.

***Response 3.1-1:** On June 28, 2007, the USFWS announced the removal of the bald eagle from the list of threatened and endangered species due to a dramatic rebound in its breeding population while under protection of the Endangered Species Act. The number of breeding pairs of bald eagles in the lower 48 states now stands at over 9,700, up from a low of 417 documented in 1963. Removal from the Federal List of Endangered and Threatened Wildlife and Plants became effective on August 8, 2007, 30 days after publication in the July 9, 2007 Federal Register. The eagle continues to be protected under the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Act.*

*The USFWS has proposed a rule for a new permit that would authorize limited take under BGEPA and grandfather existing Act authorizations. Comments are being accepted on this rule until September of this year.*

*The Service has also defined the term "disturb" as it is used in the protection of the bald eagle under the BGEPA. As documented in the June 5, 2007 Federal Register, "disturb" is taken to mean "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior..." "This definition largely reflects how "disturb" has been interpreted in the past by the Service and other Federal and State wildlife and land management agencies. The final definition of "disturb" encompasses impacts that, based on the best scientific information available, are likely to cause injury to an eagle, or a decrease in its capacity to reproduce. This may include effects from disturbance caused by habitat manipulation."*

*In order to ensure the bald eagle remains off of the threatened and endangered species list and the BGEPA requirements are met, the USFWS has generated the National Bald Eagle Management Guidelines dated May 2007 (see the USFWS website:*

*<http://www.fws.gov/migratorybirds/issues/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>).*

*As stated in this document, "The Guidelines are intended to help people minimize such impacts to bald eagles, particularly where they may constitute 'disturbance'" which is prohibited by the Eagle Act.*

*The Guidelines are intended to:*

*(1) Publicize the provisions of the Eagle Act that continue to protect bald eagles, in order to reduce the possibility that people will violate the law,*

*(2) Advise landowners, land managers and the general public of the potential for various human activities to disturb bald eagles, and*

*(3) Encourage additional non-binding land management practices that benefit bald eagles (see Additional Recommendations section)...*

*Adherence to the Guidelines herein will benefit individuals, agencies, organizations, and companies by helping them avoid violations of the law. However, the Guidelines themselves are not law. Rather, they are recommendations based on several decades of behavioral observations, science, and conservation measures to avoid or minimize adverse impacts to bald eagles."*

*The document goes on to state that "[t]o avoid disturbing nesting bald eagles, we (USFWS) recommend (1) keeping a distance between the activity and the nest (distance buffers), (2) maintaining preferably forested (or natural) areas between the activity and around nest trees (landscape buffers), and (3) avoiding certain activities during the breeding season. The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest trees and provide for alternative or replacement nest trees."*

*The Bald Eagle Mitigation Plan developed for the Proposed Action in conjunction with NYSDEC bald eagle experts incorporates all three management components identified above:*

*1) Distance buffers at least twice that recommended in the new Guidelines are maintained (a minimum of approximately 1,500 feet between the proposed development disturbance envelope and the nearest nest tree versus 660 feet maximum in the Guidelines);*

*2) A forested strip/landscape buffer, with the exception of hand clearing of vegetation no greater than three inches in diameter at breast height in an area no greater than eight feet in width on Lots 8 through 12 and the proposed lake access for Common Lot 13, of 150 feet (an increase of 50 feet over that noted in the DEIS, see the attached Wetlands Disturbance Details and Proposed Clearing Limits Drawings) will be maintained between the proposed development and the shoreline of Swan Lake; and clearing of vegetation within 100 feet of the lake shoreline on Lot Nos. 3-7 will be restricted to hand clearing of vegetation no greater than three inches in diameter at breast height, and only to create a walking path of no more than eight feet wide.*

*3) A construction schedule that avoids loud outdoor activities between January 1 and May 15 (covering the vast majority of the nest building, egg laying, incubation, and hatching and young rearing portion of the eagle's life cycle), will be observed.*

*In addition, the Applicant has indicated it will dedicate 31 acres surrounding the breeding sites for the eagles as a permanent conservation easement. This area includes eagle nest trees A, B and C. Furthermore, the use of gasoline powered boats, currently used on the lake, will be prohibited. To this end, the Applicant will request all homeowners to comply with the restriction. Refer to Appendix C, Declaration of Covenants, Restrictions, Easements, Charges & Liens for information on these restrictions. Each existing homeowner will be contacted either personally or by certified letter if required. Should homeowners not comply with the restriction, the Applicant will take the appropriate legal action.*

*Finally, the Applicant will post signs at access points prohibiting motorized vehicle (e.g. snowmobiles, all terrain vehicles) use of the lake, which, depending on weather and ice conditions, may correspond with early nesting activities of the resident bald eagles.*

*These measures will provide permanent protection for the area supporting the existing eagle nesting habitat resulting in the conservation of the active eagle nests.*

**Comment 3.1-2 (Public Hearing Transcript, February 6, 2007, John Parker):** The loss of breeding nest A is discussed as if it still exists. For anybody familiar with this who knows, breeding nest A is gone, about as gone as it could be. It is destroyed.

***Response 3.1-2:** Five nests have been constructed by the resident bald eagles within the Swan Lake breeding territory. Nest C, which was active and successful in 2006, fell from the tree in which it was built in late summer 2006. In 2007, the resident eagle pair nested in the original nest (nest A, which was first built in 1996) and successfully fledged two young..*

*According to NYSDEC, it is not uncommon for eagle nests to be damaged or lost. The area containing nests A and B, remains an active breeding ground for eagles and will be protected through a conservation easement. See Response 3.1-1.*

**Comment 3.1-3 (Public Hearing Transcript, February 6, 2007, John Parker):** There is an obligation under federal law and implementing regulations for the Fish and Wildlife Service to be an integral party to this in terms of how we are dealing with the management of these federally protected species, and that's not yet been done.

***Response 3.1-3:** The USFWS has been listed as an Interested Agency and has been involved in the SEQRA process. USFWS participated in the scoping for the DEIS and they were sent a copy of the DEIS and all related plans for comment. Robyn Niver of the USFWS Cortlandt, NY office has also been contacted by telephone on this matter and confirmed that the DEIS was received, reviewed and discussed with NYSDEC staff. Refer to Appendix D, Correspondence, for a copy of the letter generated by the USFWS regarding the Swan Lake DEIS.*

**Comment 3.1-4 (Public Hearing Transcript, February 6, 2007, John Parker):** Inaccurate description of behavior of Bald Eagles on Swan Lake. You'll hear people talking about that tonight. Crucial to protecting their habitat is understanding how they are, how they act. This is their home, as we discussed earlier.

***Response 3.1-4:** NYSDEC biologists have studied these eagles for some time and biologists from TMA have utilized the NYSDEC information provided on this pair to*

*asses impacts and adopt adequate mitigation measures. The habitat detailed in the study and the behavior outlined in the DEIS have been reviewed by the appropriate individuals at the NYSDEC Endangered Species Program and are maintained to be accurately represented.*

**Comment 3.1-5 (Public Hearing Transcript, February 6, 2007, John Parker):** Is their failure to discuss and accurately analyze the recreational use of folks who use and enjoy Swan Lake. Yes, it is important because they also impact the eagles as they use it now and as they are anticipation to use it in the future.

**Response 3.1-5:** *The Applicant would prohibit the use of gasoline powered boats as a condition of the proposed project. Restricting the types of vessels using the lake to those with small electric motors, wind, oars or paddles would reduce existing noise levels, and minimize pollution to the lake waters thereby improving the lake environs as an eagle nesting site over existing conditions. In addition, motorized vehicle (e.g. snowmobiles, all terrain vehicles) use of the lake would be prohibited. Refer to Response 3.1-1.*

**Comment 3.1-6 (Public Hearing Transcript, February 6, 2007, John Parker):** There's been a failure to discuss and acknowledge the limited time period for construction to avoid significant adverse impacts to the eagles. It's in documents that are in the appendices to the DEIS. We know from other studies and from federal guidance there are certain windows, and if you construct out of that the eagles are seriously impacted. They are very sensitive to these type of disturbances. That's not addressed here.

**Response 3.1-6:** *Construction scheduling has been designed to limit the impact of construction on the nesting eagles. As recommended by Peter Nye and Steve Joule of the NYSDEC and agreed to by the Applicant at a meeting in April of 2007, no tree clearing, grading or exterior home construction would take place on Lots 7 through 14 from January 1 through May 15.*

*In June of 2007, the USFWS recommended that a no work window of January 1 through September 1 be established. Subsequent conversations, correspondences and coordination between the USFWS, the Applicant, and NYSDEC resulted in agreement on the January 1 to May 15 no work window as the longer window is generally reserved for activities where work is proposed in the Primary Protection Zone or within roughly 660 feet of the nest tree. No construction activity is proposed within the Primary Protection Zone as part of the Proposed Action. The closest eagle's nest to the project's construction zone is approximately 1,500 feet. This distance is more than double the distance currently recommended as a buffer for nest sites under the new guidelines dated May 2007.*

*Refer to Response 3.1-1.*

**Comment 3.1-7 (Public Hearing Transcript, February 6, 2007, John Parker):** We have seen nothing at this preliminary stage for us in our review of the contents of the EIS that have changed our feelings about that. We don't think it thoroughly addresses the eagle impacts as it is required, and it certainly doesn't address the other impacts we discussed in Scoping. For these reasons we believe the DEIS is legally insufficient.

**Response 3.1-7:** *See also Response 6.0-7. The NYSDEC is the authority on the bald eagle and its habitat throughout the State of New York and is legally responsible for its*

protection. The Applicant worked closely with agency staff to develop an Eagle Mitigation Plan that would protect the eagle pair that nest on Swan Lake. Initially, the proposed project included the subdivision and development of two roughly equally sized parcels on Swan Lake; the Kelly Bridge Road and Lake Marie Road parcels.

After reviewing the Eagle Mitigation Plan, the NYSDEC determined that significant impacts to the eagle could potentially result from the development of the Proposed Project and assumed Lead Agency status. As Lead Agency the NYSDEC is responsible for the environmental review of this project under SEQRA. Agency staff reviewed all previous documentation and project plans generated as part of the initial environmental review and determined that a DEIS would be required to assess potential significant impacts to the eagle. At that time, the NYSDEC also determined that significant impacts to the environment, outside of the bald eagle, would not result from the proposed development. As such, the Swan Lake Estates Final DEIS Scoping Document focused on the one resource of concern, the bald eagle. The DEIS is compliant with the requirements of the Swan Lake Estates Final DEIS Scoping Document and assesses potential significant impacts to the eagles in appropriate detail.

After the draft DEIS was prepared and submitted to the NYSDEC for completeness review, the Lake Marie Road parcel was sold and is no longer part of the Proposed Action. The Applicant no longer owns the property or has the ability to develop the site. Therefore, the impacts discussed in the Eagle Mitigation Plan that were associated with the Lake Marie Road subdivision no longer exist and any potential impacts associated with the subdivision and development of that parcel to nesting eagles at Swan Lake has been eliminated.

However, with regard to potential impacts and cumulative impacts to the Bald Eagle from the revised, downsized proposal and potential future development on Swan Lake, the NYSDEC did conduct a comprehensive review and determined that the changes made to this part of the proposal make sure that impacts to the Bald Eagle are avoided or minimized to the maximum extent practical.

**Comment 3.1-8 (Public Hearing Transcript, February 6, 2007, John Parker):** And for the additional reason of the segmentation and cancellation of half of a project in the middle of a process.

**Response 3.1-8:** The regulations define "segmentation" as follows: "Segmentation means the division of the environmental review of any action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance." 6 NYCRR 617.2(ag). The Department is not required to speculate when, if ever, the owner of the parcel which was sold will submit a development application, and what the nature of such a project might be. In this case, the Applicant developed an Eagle Mitigation Plan and a draft DEIS (submitted to the NYSDEC for completeness review) based on the proposed development of two noncontiguous parcels of land known previously as the Kelly Bridge Road and Lake Marie Road Subdivision. Since that time, the Applicant sold the parcel of land that was to be developed as the Lake Marie Road Subdivision to another private individual. The Applicant no longer owns the property or has the ability to develop the site. Therefore, the segmentation of review is not applicable to the proposed development of the Kelly Bridge Road parcel.

*The Lead Agency is not required to speculate when, if ever, the owner of the parcel which was sold will submit a development application, and what the nature of such a project might be.*

**Comment 3.1-9 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** Now, the other problem I saw with the DEIS that jumped out of the page on me was, you know, it's cold today, and according to the DEIS Swan Lake freezes over in the winter. Now, those of you who have seen the eagles at Swan Lake winter, spring, summer and fall know that there's always running water at Swan Lake. People are nodding. That running water is east of Kelly Bridge. My house is right there. And a lot of people who have gone past that section, because it is Kelly Bridge have actually seen the eagles take prey, lay it out on the ice. And that's the part where right as the water comes, they can see it. So when I first read one of the earlier versions of the DEIS it said Swan lake freezes over completely and the eagles go to Florida. I was wondering if maybe that wasn't confusing people at Presidential Estates.

But anyway, the irony is that the Delaware Valley area is where hundreds of eagles come from Canada. So the eagles here at Swan Lake actually like where they are all year round. Like some residents. They don't go to the Chesapeake Bay area. So that was another sort of oopsy that I noticed.

***Response 3.1-9:** NYSDEC biologists have studied the wintering habits of the bald eagles in the area and determined they migrate south during extreme winter conditions. The eagles that have been observed during the winter are not necessarily local eagles but could be migrating eagles on their way through the area enroute to better wintering locations.*

*As stated in the comment, the area directly under and below Kelly Bridge remains open during the winter. However this is not prime eagle feeding habitat due to the limited area of open water and the limited access the eagles have to this open water; in addition to the bridge crossing, there are houses in the vicinity and power lines spanning the open water area. While Swan Lake is not known as a concentration area for wintering eagles, it could be used on occasion if carrion is present on the ice or if birds are migrating through this area and the lake is not frozen over. Since wintering habitat is variable (it depends on the amount of open (unfrozen) water and available food sources which are generally fish and to a lesser extent waterfowl and carrion) and changes from year to year based on weather conditions and a number of other factors, protocol for its protection is not set forth in the National Bald Eagle Management Guidelines.*

**Comment 3.1-10 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** The other sort of thing that jumped out at me was it says that the national guideline for managing Bald Eagles encourages landowners to work cooperatively with State and federal agencies. So yesterday when I talked to the US Fish and Wildlife service in Cortland, New York, they told me they have never received any replies to your letters.

***Response 3.1-10:** See Response 3.1-3.*

**Comment 3.1-11 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** The other thing that I'm concerned about is that the DEIS treats the mitigation plans as these circles as nests. Their primary perching, feeding, roosting, flyway areas are completely -- they are either generalized, or they're missing, they're in the pine trees here and they are roosting, but

nothing really in the context of their home, of the whole lake. So I don't really know whether a circle around a nest is also a mitigation plan. Those are the questions that I have.

**Response 3.1-11:** *Protocols for protection of the bald eagle have been and continue to be focused on the nest tree and immediate surrounding environs. The intent of this approach is to protect the adult birds and their young from disturbance at the nest which is a relatively consistent, easily identifiable and vulnerable habitat that is used by a mating pair of birds for a period of years or decades.*

*The document used to develop the project's Bald Eagle Mitigation Plan, submitted as part of the DEIS, is titled Guidelines for Managing Bald Eagles (2000). This document was provided to the Applicant by the NYSDEC and utilizes nest tree protection zones to restrict or limit activities in close proximity to eagle nesting sites. This document recommends establishing a Primary Protection Zone ranging between 330 and 750 feet from the nest site and a Secondary Protection Zone ranging between 750 and 1500 feet from the nest site. Since the Bald Eagle Mitigation Plan for this project was prepared, the Bald Eagle has been removed from the federal threatened and endangered species list. As a result, a new set of guidelines for managing bald eagles titled National Bald Eagle Management Guidelines (2007) was developed. Similar to Guidelines for Managing Bald Eagles (2000), this document utilizes nest tree protection zones within which activities are restricted. The new guidelines recommend a nest tree protection zone of 330 to 660 feet. As recommended in the Guidelines for Managing Bald Eagles (2000), the proposed project would establish a nest tree protection zone of approximately 1,500 feet. This distance is more than double the buffer size recommended in the National Bald Eagle Management Guidelines (2007).*

*The protection zones (circles) depicted on the plans in the DEIS show the areas surrounding the nest sites where no disturbance would occur. The protection zones used during the development of the mitigation plan were the most conservative found in any of the management documents reviewed both pre- and post-delisting. As discussed above, the new Management Guidelines require smaller protection zones than those used in the Swan Lake mitigation plan.*

*In addition, the Applicant agreed to add a 150 foot clearing buffer (originally 100 feet) to Lots 8 through 12 to provide a visual buffer between the closest nest trees the proposed development envelope and further limit disturbance immediately adjacent to the 1500 foot protection area. The only disturbance allowed in the 150 foot buffer would be for a hand cleared trail providing pedestrian access to the lake. Clearing of vegetation within 100 feet of the lake shoreline on Lot Nos. 3-7 will be restricted to hand clearing of vegetation no greater than three inches in diameter at breast height, and only to create a walking path of no more than eight feet wide.*

**Comment 3.1-12 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** It is recommended there's a 1500 foot radius in the DEIS, and so sometimes it's used and sometimes it's not. And I'm not really sure why there is that kind of level of inconsistency there.

**Response 3.1-12:** *The mitigation plan documented in the DEIS establishes a minimum buffer of approximately 1,500 feet between nest trees A, B and C and the Kelly Bridge Road development envelope as recommended by the NYSDEC and the Guidelines for Managing Bald Eagles (2000) document. Refer to Response 3.1-11.*

**Comment 3.1-13 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** I think I mentioned that I had seen a map in Sullivan County Clerk's office from 1856 from Swan Lake. And all of the wilderness areas that are here now were there then. So I don't know exactly how the definite second growth forest is determined.

**Response 3.1-13:** *A forest is considered a second growth forest if the area has been logged/cut/burned at least once. Based upon the size of the trees on site, the forest on the Kelly Bridge Road property is considered a second growth forest.*

**Comment 3.1-14 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** And we aren't up in this area, because the eagle flies through the whole lake. It doesn't stay in the circle. What happens is that it fishes here. I've seen -- I live at about here -- I've seen them here with the ice and then the fishermen make the hole to go ice fishing, whatever, we have seen them to be here, down here. We have seen them to be over the whole entire lake. My concern is even if we have these measures in place, is it enough? I'm not sure it is.

**Response 3.1-14:** *The Applicant acknowledges that the eagle pair use the lake and the surrounding environs. The approach for protecting this species has been and continues to be through the establishment of nest tree protection zones within which certain activities are restricted. This approach was recommended by both the NYSDEC and the USFWS for the protection of the Swan Lake eagles and thus it is the approach adopted for protection of the nesting eagles at Swan Lake.*

*In order to ensure the bald eagle remains off of the threatened and endangered species list, the USFWS has generated the National Bald Eagle Management Guidelines dated May 2007 (copies available on the USFWS website). Protocols for protection of this avian species have been and continue to be focused on the nest tree and surrounding environs. The Management Guidelines, as with past bald eagle management documents, utilizes nest tree protection zones within which activities are restricted. The intent of this approach is to protect the adult birds and their young from disturbance at the nest which is a relatively consistent, easily identifiable and vulnerable habitat that is utilized by a mating pair of birds for a period of years or decades. As wintering habitat is variable, dependent on open (unfrozen) water and available food sources (generally fish and to a lesser extent waterfowl and carrion) which changes from year to year based on weather and a number of other factors, protocol for its protection is not set forth in the Management Guidelines. As a result of the location and physical makeup of the project site and the distance to the nearest nest site, impacts to the bald eagle resulting from the Proposed Action are not anticipated.*

*Refer to Response 3.1-11.*

**Comment 3.1-15 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** Why hasn't Mr. Murolo signed the easement to the Delaware Highland conservancy for the 23 acres that did have the three eagles nests but now only has two.

**Response 3.1-15:** *A conservation easement covering the 31-acre parcel across the lake from the proposed subdivision will be granted to the Delaware Highland Conservancy as part of the mitigation for the Proposed Action. Knowing that development pressures will continue into the future, this easement is planned as a mitigation measure to offset potential future, long-term impacts that could result from potential development. With the proposed easement in place, the 31 acres will be protected from these pressures.*

*Execution of the Easement will be a condition of any permit issued by the DEC, and the project will not be able to proceed without the easement. The applicant's offer of the easement is conditioned on the project receiving the approvals required to move forward.*

*Also refer to Response 3.1-2.*

**Comment 3.1-16 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** The main eagle breeding nest was destroyed in August of 2006. Just a question. Mr. Murolo you said to the newspapers you had already signed this easement, another misconception.

***Response 3.1-16:*** See Response 3.1-15.

**Comment 3.1-17 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** The easement has not been signed. Why does the DEIS submitted by Tim Miller Associates does not make mention that the breeding nest is gone, no less where they are going to be breeding this year, will they be using one of the other nests or are they rebuilding a new nest and where? We are only going to know this if we -- we are not going to know this unless somebody actually goes out there and looks. Because now is the time of year that the eagles will breed and build their new nest. We don't know.

***Response 3.1-17:*** Refer to Response 3.1-15. The loss of the nest was not observed by Tim Miller Associates (TMA) or the NYSDEC until after the DEIS was written. The eagles have since returned to area and successfully fledged two young from Nest A in 2007.

**Comment 3.1-18 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** You think they are going to stay just in this circle? I don't know. They could go here or they could go wherever they want to. It's their right.

***Response 3.1-18:*** It has not been suggested that the eagles only live within the circle perimeters shown around the nests in the DEIS. It is acknowledged that the eagles utilize most of the lake and perch in trees adjacent to the edge of the lake. The 1500 foot nest tree protection areas represented by the circles are proposed to help protect nesting sites from forms of human encroachment. The intent of this approach is to protect the adult birds and their young from disturbance at the nest which is a relatively consistent, easily identifiable and vulnerable habitat that is utilized by a mating pair of birds for a period of years or decades.

*Refer to Response 3.1-11.*

**Comment 3.1-19 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** What will the impact be for the eagles if the subdivision is approved? What effect will this have on the eagles' ability to continue to breed successfully? I don't know about you, but I don't think telling them, we are going to be in construction for two years, just don't mind us. We are just going to be here, but the noise and everything else, but don't mind us, we'll be gone in two years and you can go back to having little babies then.

***Response 3.1-19:*** The measures set forth in the project's Eagle Mitigation Plan are designed to provide appropriate mitigation for the eagles such that no significant

*adverse impacts to the eagles would be expected from the Proposed Action. These measures include the following:*

- *a 1500 foot nest tree protection zone;*
- *the proposed prohibition of gas powered boats and other motorized vehicles (e.g. snowmobiles, all terrain vehicles) on the lake;*
- *the incorporation of disturbance buffers;*
- *A limited construction window;*
- *a 31-acre conservation easement.*

**Comment 3.1-20 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** Can the DEC or any other state or federal governmental agency definitively say that this development won't hurt the critical habitat of the American Bald Eagle they call home here on Swan Lake?

***Response 3.1-20:*** *Refer to Response 3.1-1.*

**Comment 3.1-21 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** These are critical environmental areas. This bird just doesn't stay right here. The whole lake is its environmental area. The whole lake. Yes, that's where main breeding nests are. But we don't know now where they are, because the main breeding nest is gone. We don't know if they are going to go up here, back to this nest. We don't know where they are going to go. We know they like to perch, roost, do all their things here. We see them. We see them fly and wait. We see the mama who used to be in that nest and the male eagle will be over here and watch. We don't see that. We know that this area in here is extremely -- this especially right here on this peninsula is their area that they like to be in. But today this is what it looks like. The eagles nest is gone. We asked questions why is it gone? What happened? Nobody knows. It just happened. So while we sit and we debate possible negative impacts, one of the worst things has already happened. The eagles nest, the main breeding nest, the successful breeding nest that had three eagles last year -- and anybody will tell you is exceptional, three eagles, baby eaglets, the only thing worse that can happen down here at Swan Lake for these eagles is that whatever happens with this development they will just fly away.

***Response 3.1-21:*** *See Responses 3.1-1, 3.1-2 and 3.1-18.*

**Comment 3.1-22 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** Given that Swan Lake is home to a successful breeding pair of American Bald Eagles and yearly offspring, and this is a critically endangered species environmental area, is it prudent to allow this development to be built?

Even Peter Nye said his first instinct as he reported at the Town Crier at the Eagle Fest in 2005 was that no houses should ever be built there. In the 2006 at the last -- in the Town Crier at the Eagle Fest, Dr. Lawrence Niles, biologist with the Wildlife Foundation of New Jersey, stated we are concerned that if you start removing the protections that you get from the Endangered Species Act, that you will no longer be able to fight that intrusion.

***Response 3.1-22:*** *See Response 3.1-1 regarding the status of the bald eagle and the Endangered Species Act; it is not a critically endangered species. The Applicant has been in communication with NYSDEC staff and the Eagle Mitigation Plan reflects recommendations made by the NYSDEC biologist working on this project.*

**Comment 3.1-23 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):**

Shoreline development is a serious issue. What people want most to develop is the Bald Eagle's habitat, the waterfront. And what our contention is that this entire lake is its habitat, not just within the circle. And I would venture to think that the eagle thinks so too, because we see them flying over our house. We see them with the two baby eaglets that don't go away in the wintertime. They don't go to Florida or Chesapeake. Although it would be nice if we could all go there tonight, how cold it is. But they don't go. They stay.

***Response 3.1-23:*** *In addition to the 1,500 foot protection area, there will be a 150 foot disturbance buffer on Lots 8 through 12 to further protect the eagle's roosting sites and increase the visual buffer from the nest trees. It is opinion of the Applicant and the NYSDEC that after (or even before) Swan Lake freezes this pair of eagles and their offspring leave the area for better winter feeding grounds. See Responses 3.1-9 and 3.1-18.*

**Comment 3.1-24 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson):**

I've seen the Bald Eagle for long as I could remember. They soar around. They do not fly south, as the DEIS states, as prepared by Tim Miller Associates, Actually, they were on the semi-frozen lake foraging by lots 7, 8, 9, 10, all up in here just last week. I've seen the eagles roost atop the trees across from lots 13 and 14, over here. I have also seen them perch throughout lots 6,7, 8, 9, 10, 11,12, 13 and 14. That's practically everything. So as other people were saying, this circle, I mean you're not fenced in. They are not fenced in.

***Response 3.1-24:*** *See Responses 3.1-9, 3.1-18 and 3.1-23.*

**Comment 3.1-25 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson):** A successful eagles nest disappearing from view in August of 2006.

***Response 3.1-25:*** *See Response 3.1-2.*

**Comment 3.1-26 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson):**

From the picture window of my home I see eagles soar, perch, roost this project will negatively impact their very existence. One of the nests is gone. They feed in waters that directly abut lot 7. This above any other parcel is most critical for these birds' survival.

***Response 3.1-26:*** *See Responses 3.1-2, 3.1-18 and 3.1-23.*

**Comment 3.1-27 (Public Hearing Transcript, February 6, 2007, Mr. Heinrich Strauch):**

I would also like to remind that construction has been going on in that area. It has not been a completely undisturbed area. Shore Road was replaced. There was drainage and water lines put in. There were individual houses built just on the upper side end of Shore -- of the Swan Lake alongside Shore Road. All of that has apparently not led to a significant disturbance for the eagles that led to their migration. So I think that, with the proposed mitigation plan there is a solution going forward.

***Response 3.1-27:*** *Comment noted.*

**Comment 3.1-28 (Public Hearing Transcript, February 6, 2007, Ms. Melissa Olton):**

Human occupation will greatly impact this bird and will eventually force it to move on. This will be a shame because this bird has probably lived on this lake for approximately 20 years, judging from the nest.

**Response 3.1-28** *The Eagle Mitigation Plan for the project was arrived at with the specific purpose of offsetting the disturbance associated with the construction of homes on the AJM property. It is believed that with the directives given in the mitigation plan that regulate the construction and use of the proposed homesites, the eagles will not be significantly impacted and that they will continue to utilize Swan Lake.*

*It is important to note that this particular pair of eagles has been able to successfully nest on Swan Lake with the existing level of human activity and noise associated with homes and boat uses as well as other ongoing recreational activities.*

**Comment 3.1-29 (Public Hearing Transcript, February 6, 2007, Ms. Melissa Olton):** Also there is a plan to build a small marina which will greatly populate the lake and which will also affect the eagle and the ecology of the environment.

**Response 3.1-29:** *The Applicant has no plans to build a marina. As shown on the plans, there is a proposal for each lake front lot to have one dock. This includes a dock on Lot # 13, the common lot, for use by the proposed homeowners and their guests that do not have lake frontage.*

**Comment 3.1-30 (Letter 4, Michael Edwards, January 22, 2007):** The Assessment says that "Swan Lake freezes over during the winter" (p32) but this is untrue, especially in a warm winter such as now. Even in a normal winter, a large area of the lake surrounding Kelly Bridge remains unfrozen, almost up to the eastern boundary of the project site. This is where the bald eagles fish during the winter months, as I have observed myself numerous times. Therefore, any activity at or near this area will affect the eagles.

**Response 3.1-30:** *See Response 3.1-9*

**Comment 3.1-31 (Letter 4, Michael Edwards, January 22, 2007):** The Assessment claims that no significant damage will be done to Kelly Bridge Road during the construction or other phases of the project. I have personally observed the deterioration of Kelly Bridge Road and the bridge itself, due to the damage caused by Nastro vehicles in the construction of the access road through the project site. The road will obviously be eroded even further during the construction of the 21 houses. It is my understanding, having read the Bald Eagles Management Guidelines, that construction should not take place during the eagles' nest-building, breeding and hatching stages. What guarantees are in place to ensure that construction activities will not interfere with the eagles' breeding cycle?

**Response 3.1-31:** *A Stormwater Pollution Prevention Plan (SWPPP) was developed by the Project Engineer for the Proposed Action. The NYSDEC has accepted the SWPPP and will monitor the site during construction for compliance with the Plan. The Plan protects all downstream aquatic resources, including Swan Lake, from stormwater and erosion resulting from activities proposed on the site. A copy of the SWPPP is included in Appendix E herein.*

*A copy of the Order on Consent between the Applicant and the NYSDEC is included in Appendix H. This provides further documentation on the stormwater management at the project site.*

*The use of Kelly Bridge Road by vehicles traveling to and from the site is not prohibited by any law of which the Applicant is aware. It is the Town's responsibility to maintain all roads in their jurisdiction.*

*Refer to Responses 3.1-1 and 3.1-6 regarding "no work windows" and construction activities.*

**Comment 3.1-32 (Letter 4, Michael Edwards, January 22, 2007):** Therefore, I am requesting that a full, proper and comprehensive mitigation plan be prepared covering all aspects of the potential damage caused by this project to the surrounding eagle habitat to public health and safety, to water quality and to the preservation of bio-diversity.

***Response 3.1-32:** As required by SEQRA, the Scoping Document, DEIS and this FEIS identify, assess and propose mitigation to offset all significant potential impacts to the resident bald eagles associated with the Proposed Action. The results of the environmental review process will be summarized in the Lead Agency's Statement of Findings and the necessary mitigation measures will be clearly identified.*

**Comment 3.1-33 (Letter 4, Michael Edwards, January 22, 2007):** I would like to suggest that there is a much better alternative to further residential development of this kind in the area, regardless of which plan is used (high, low or medium density). This would be for the State Parks and Recreation Department to purchase Swan Lake and its surroundings as a wildlife refuge and public-access area of great beauty so that the entire area can be preserved in perpetuity for generations still to come. By common consent, Swan Lake is one of the last, if not the last, clean lakes in Sullivan County with a substantial amount of undeveloped wetland and forest still remaining. When pretty much every other lake in the county has been developed, why not preserve at least one for the public to enjoy in its current condition? This would be a wonderful statement by the DEC, fully keeping with its mission.

***Response 3.1-33:** Comment noted. The Swan Lake, Kelly Bridge site is not of acquisition interest to the Department at this time.*

**Comment 3.1-34 (Letter 6, Suzanne Stylians, No date):** If the project abuts the shore line and four eagle nests, then shouldn't the state step in to postpone the project. Reduce the lots in the area of concern to protect the Eagles. As are the signs on state land "warning Endanger Species Protected Area", in the region where the Eagles are, then reduce the area nearest the Eagle Nest.

***Response 3.1-34:** Refer to Response 3.1-6 regarding construction scheduling. NYSDEC biologists have visited the site, reviewed the project, and worked with the Applicant in creating the Bald Eagle Mitigation Plan and additional measures presented in the DEIS and this FEIS. The Applicant has accepted, as a permit condition, that no outdoor construction, such as grading, tree clearing, building framing, or roofing, will be done on Lots 7 through 14 from January 1 through May 15, corresponding to the eagle nesting period. In addition, the NYSDEC would install signage around nest trees A, B and C to provide added protection to the existing nest sites. Refer to Response 3.1-75 for additional information on the proposed signage.*

**Comment 3.1-35 (Letter 8, Dave Colavito, February 7, 2007):** Several revelations at the meeting highlight credibility issues with this project: road building continued after instructions were given for it to cease; Bald Eagle signage existed at the project site, while the EAF

indicated that endangered species were not present. I do not know the background for this, but it is cause for concern.

**Response 3.1-35:** *After work was stopped by the NYSDEC, the road was stabilized with the consent of the NYSDEC because it was the best way to control the erosion on the site and get the storm water to the appropriate areas. Potential impacts on the eagle roosting areas, including the nest site on the peninsula across the lake from the project site, have been addressed in the DEIS and this FEIS.*

**Comment 3.1-36 (Letter 8, Dave Colavito, February 7, 2007):** I do believe that appropriate compromise is in order but in this instance, appropriate compromise goes beyond considering only human interests, and needs to give proper footing to the Bald Eagle and its endangered status. I do not know how we get the Eagle to compromise on its needs for survival in order for others to realize their financial ambitions. Decisions regarding Eagle compromise should include concurrence from appropriately trained biologists, and should be guided by the best available science. If critical gaps exist in that knowledge, then given the Eagle's endangered status, we should invoke the precautionary principle, erring on the side of doing no harm. Human inconvenience precludes neither the Eagle's endangered status nor our responsibilities.

**Response 3.1-36:** *Refer to Response 3.1-1.*

*Biologists from both TMA and the NYSDEC have been to the site, and Swan Lake in general, while reviewing the project proposal. The Eagle Mitigation Plan was developed through active correspondence between the Applicant's biologist and the NYSDEC biologists.*

*It is important to note that this particular pair of eagles has been able to successfully fledge nestlings on Swan Lake in the presence of the existing level of human activity and noise associated with homes, gasoline powered motor boats and other ongoing recreational activities.*

**Comment 3.1-37 (Letter 9, Evan Beck, February 9, 2007):** After attending a recent DEC meeting, I have become aware that work has stopped on this project. It is my understanding that the current work stoppage occurred because it was determined by the DEC that further study was required to determine if the American Bald Eagles, which are protected under the Endangered Species Act of 1973 that nest near Swan Lake would be adversely affected by this development. It is also my understanding that the developer wantonly and knowingly continued development in violation of this stoppage and was fined as a result.

**Response 3.1-37:** *The Applicant stopped work upon receipt of the Stop Work Notice from the NYSDEC based upon erosion control issues, not specifically related to the eagles. The Applicant subsequently completed work on erosion control and site stabilization measures which were approved and verified in the field by the NYSDEC. No additional work was performed which was not specifically authorized by the NYSDEC.*

**Comment 3.1-38 (Letter 9, Evan Beck, February 9, 2007):** A large nest where the eagles reside has been dislodged and is lying at the bottom of the tree where it once stood.

**Response 3.1-38:** *See Response 3.1-2.*

**Comment 3.1-39 (Letter 9, Evan Beck, February 9, 2007):** I have not seen the eagles since late July. In previous years I had numerous sightings all through August and September.

*Response 3.1-39: Comment noted. The eagles returned to Swan Lake and established a nest in the early spring of 2007.*

**Comment 3.1-40 (Letter 9, Evan Beck, February 9, 2007):** Will 20 docks being built on the lake stress the environment and invite a glut of motorized vehicles that will disturb and threaten the eagle and contaminate our water?

*Response 3.1-40: There are 11, not 20, docks proposed. Dock construction is regulated by the NYSDEC pursuant to Article 24, Freshwater Wetland Act permit requirements, therefore the NYSDEC is reviewing the related impacts. To minimize impacts, the Applicant has agreed to prohibit gasoline powered boats and other motorized vehicle (e.g. snowmobiles, all terrain vehicles) from the lake.*

**Comment 3.1-41 (Letter 11, Denny Nathanson, February 6, 2007):** I have seen the Bald Eagles for as long as I can remember. They soar thru the air year round. They do not fly south as stated in the DEIS which was prepared by Tim Miller Associates. Actually they were on the semi frozen lake foraging by Lots 7,8,9,10 and soaring across the entire lake as recent as January 21, 2007. I have seen eagles roost on top the trees across from Lot 13 & 14. I have also seen them perch, soar and fish throughout Lots 6, 7, 8, 9, 10, 11, 12, 13, &14.

*Response 3.1-41: See Responses 3.1-9 and 3.1-18.*

**Comment 3.1-42 (Letter 11, Denny Nathanson, February 6, 2007):** A successful eagle nest disappearing from view, August, 2006.

*Response 3.1-42: See Response 3.1-2.*

**Comment 3.1-43 (Letter 11, Denny Nathanson, February 6, 2007):** From the picture window of my home, I see the eagles soar, perch, roost, feed as many as 4 at a time. The Bald Eagles flying over the peninsula (lot 7) and rest on top of the white pine trees. Given the sensitivity of the Bald Eagle, any disturbance of their habitat, which includes the breeding nest and white pine trees which they perch and roost on, will negatively impact their very existence. They feed in the waters that directly abut Lot 7. This above any other parcel is the most critical for these bird's survival. I have taken telephotos of the eagles resting, flying, feeding from my backyard, please find them enclosed.

*Response 3.1-43: Refer to Response 3.1-1 and 3.1-18. The Applicant has worked closely with the NYSDEC in developing the Bald Eagle Mitigation Plan presented in the DEIS. The mitigation measures incorporated in the DEIS and this FEIS consider historical observations of the NYSDEC field records for this site.*

**Comment 3.1-44 (Letter 12, Chris Karras, February 13, 2007):** Why save the Bald Eagle and it's environment? Basically, the Swan Lake Owners Association is trying to build almost directly across from a nest in which the eagle lives. Human occupation will greatly impact this bird and will eventually force it to move on. This would be a shame because this bird has probably lived on this lake for approximately twenty years judging from the nest.

*Response 3.1-44: Refer to Response 3.1-28.*

**Comment 3.1-45 (Letter 12, Chris Karras, February 13, 2007):** Also there is a plan to build a small marina which will greatly populate the lake which will also affect the eagle and the ecology of the environment.

**Response 3.1-45:** See Response 3.1-29.

**Comment 3.1-46 (Letter 13, Andrew Brower, February 15, 2007):** An adverse impact to nesting, breeding, and sustenance of the native Bald Eagle population, which is devastating within proposed construction area as well as the entire lake area. An adverse environmental impact would be bestowed upon the lands bordering Swan Lake, both shorelines, as will as upon the water quality of Swan Lake itself. Firstly, the adverse physical impact of this subdivision to the eagles (and other wildlife) created by the destruction of the forest is implicit: It cannot be avoided no matter how many mitigation factors are included in the DEIS and permit application. And this is an ideal situation, certainly not the case with the current proposed Kelly Bridge Subdivision.

**Response 3.1-46:** *The habitat for the eagles nesting at Swan Lake has been reviewed by NYSDEC biologists and the Applicant's biologists. While trees will be cut in the areas directly around the homes and along the roadway and driveway corridors on the project site, many acres of existing habitat are proposed to remain undisturbed under the Proposed Action. Based on the modifications made to the plans (increasing the undisturbed buffer around the lake, reducing the size and reconfiguring the pathways to the lake and limiting the development envelope around the proposed homes) and the implementation of the mitigation plan to offset remaining impacts, the potential effects of the development are not anticipated to cause a significant impact to wildlife in and around the site, including the eagles.*

**Comment 3.1-47 (Letter 13, Andrew Brower, February 15, 2007):** One of the most attractive aspects of Swan Lake is that it is not a "Motorboat Lake" (such as White Lake, among many other examples) overrun with loud boat motors and sometimes equally loud tourists who treat the lake simply as an amusement with little regard for the quality of the lake water and the surrounding land areas.

**Response 3.1-47:** *The Applicant has proposed the prohibition of gas powered boats and other motorized vehicle (e.g. snowmobiles, all terrain vehicles) on Swan Lake.*

**Comment 3.1-48 (Letter 14, Cynthia Karras, February 17, 2007):** Maybe I am naive but when I read that, an environmental study would be done for the permit process I believed that an actual accounting of what is here on Swan Lake would be addressed. Instead, what is submitted by Tim Miller Associates is a sham. When one reads this DEIS it is clear that most of the information supplied as their mitigation measures are carbon copies from a book that then is used for every other client's DEIS. It does not address Swan Lake as a real entity. The information is so broad based that they try to make it apply in any similar scenario. It is a generic cookie cutter copy. We know no more after reading AJM's DEIS then we knew through the EAF that was submitted. It actually has less information, because we expected to actually read factual information that pertained to Swan Lake and it's natural eco system.

**Response 3.1-48:** *The mitigation measures presented in the DEIS and this FEIS are based on information collected during site visits by NYSDEC staff and the Applicant's consultants and historic data collected by the NYSDEC on the Swan Lake nesting eagle*

*pair and, as such, are specific to the eagles, their nest and perching roosting sites on Swan Lake. Examples include the 31 acre conservation easement, the buffers along the lake shore and the work windows, all of which are tailored to provide protection to the Swan Lake eagles.*

**Comment 3.1-49 (Letter 14, Cynthia Karras, February 17, 2007):** Listening to Chris Robbins, Tim Miller Associates Representative explain their DEIS maps, it became very clear that he had not spent any quality time here at Swan Lake. How do you submit a DEIS in December 2006 and still talk about eagle breeding nest A on February 6, 2007 as if it is still being used and continue to mitigate for something which has been gone since August 2006? Clearly, Mr. Robbins had not been kept informed about current events (last 6 months) on Swan Lake.

***Response 3.1-49:*** Refer to response 3.1-2.

**Comment 3.1-50 (Letter 14, Cynthia Karras, February 17, 2007):** This only goes to show you that the water table under the land is such that they themselves say now “Hand clearing” of the lake access paths will be done. What they do not say it is because heavy trucks sink if the lake is not dewatered by over 18 inches. Will they dewater the lake again when heavy equipment is needed and used to clear for house and driveway’s to be built?

***Response 3.1-50:*** *The hand clearing referred to in the DEIS and in the wetland application is related to general State restrictions on work activity conducted within the 100 foot adjacent areas of wetlands, and is specifically not due to the character of the soft ground in this area. Restriction on the clearing of the paths to hand methods was incorporated as a measure to ensure that visual impacts to the nesting eagles was minimized. The lake will not be lowered for the construction of the development.*

**Comment 3.1-51 (Letter 14, Cynthia Karras, February 17, 2007):** Mr. Murola has had the Delaware Conservancy Easement document for well over a year to be signed. He has yet to sign the easement for the 31 acres that now have only nest B and C. We do not know if the eagles will rebuild nest A or go somewhere else on Kelly Bridge Road subdivision property. He has not made any attempt to protect this critical eagle habitat. If his intentions were to be environmentally friendly wouldn't he have signed the easement months ago regardless of the outcome of his permit process?

***Response 3.1-51:*** Refer to Responses 3.1-2 and 3.1-15.

**Comment 3.1-52 (Letter 14, Cynthia Karras, February 17, 2007):** Mr. Murola was asked months ago to include Eagles Nests D and E in the Delaware Highland Conservancy Easement but instead sold that property known as Lake Marie Subdivision without making sure those two nests were protected.

***Response 3.1-52:*** *The Applicant was requested to include nests D and E in a Conservation Easement if he were to move forward with the proposed development of the Lake Marie Road parcel. Since that request was made, the parcel has been sold. Should the current or future owners wish to develop the subject site, consideration of including Nest trees D and E into a conservation easement can be pursued at that time.*

**Comment 3.1-53 (Letter 14, Cynthia Karras, February 17, 2007):** This developer has already sold off Lake Marie 120 acres Nests D and E; isn't it possible for NYS to purchase the

remainder of this environmentally critical property and hold it in perpetuity for the American Bald Eagles continued habitat here on Swan Lake?

*Response 3.1-53: There is no plan for New York State to acquire the project site or surrounding properties at this time.*

**Comment 3.1-54 (Letter 16, Michael Shanahan, February 18, 2007):** AJM has ignored DEC recommendations to put all the eagles' nests, including nests D and E, into a conservation easement. Instead, AJM has chosen to sell the parcel of land where nests D and E are located.

*Response 3.1-54: See Response 3.1-52.*

**Comment 3.1-55 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Insufficient information regarding impacts on bald eagles. The DEIS does not provide sufficient information to determine the significance of impacts on bald eagles because it doesn't evaluate all of the necessary, pertinent information regarding the eagles' entire habitat at Swan Lake-including year round conditions, nesting, roosting, breeding, feeding (e.g. condition of prey species), and wintering. When impacts are not adequately described, mitigation cannot be effectively evaluated- therefore all mitigation described in the DEIS regarding bald eagles should be re-designed and re-evaluated after all the impacts have been described and discussed.

*Response 3.1-55: Refer to Responses 3.1-1, 3.1-4 and 3.1-7. The mitigation proposed in the DEIS was based on input from experts at the NYSDEC and is appropriate to offset all potential significant impacts to the resident bald eagles in the applicant's opinion.*

**Comment 3.1-56 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Evaluation of habitat quality and condition describes the value of the habitats for non-protected as well as protected species (as per SEQRA Environmental Assessment Form part 2, a completed copy of which is not included in the DEIS). This includes habitat for breeding, nursery habitat, foraging, seasonal movements, nesting, over wintering, and population dispersal. Because a species like the bald Eagle requires multiple habitat conditions, and occupies a large range, the entire Swan Lake area eagle habitat, not just the project site, must be evaluated. For the DEIS to be specifically valid the entire lake and its interrelationships with eagles must be included. Because no species exists in a vacuum, all habitats and other species on which it depends, or with which it relates, must also be described. This includes all prey species. This information will be used to document the determination of whether or not a proposed project will incur significant impacts on habitats or species.

Description of habitat quality or condition (all of which is missing from the DEIS) includes; Habitat patch size, Degree of fragmentation, Connectivity with other habitats or corridors, Age or size of trees (height, dbh), Abundance of downwood, standing snags, rocks, organic debris, woody hemmocks, and other micro habitat features, Level of human disturbance (e.g., from logging, ATVs, foot traffic, etc.), Abundance of non-native or invasive species, Diversity of native plant species, Observable quality of surface water and substrates for streams, Cumulative impacts from development and human activities (including proposed developments on Kelly Bridge, Briscoe and Shore roads)

*Response 3.1-56: A copy of the Environmental Assessment Form (EAF) completed for this project is included in Appendix A herein.*

*Impacts to non-listed species would likely not be considered significant unless the impact had the potential to negatively effect a species to such an extent as to cause wildlife protection agencies to believe that the entire species would be imperiled or the impact to the unprotected species would result in an impact to a protected species. Such an impact was not a concern of the NYSDEC with regard to the bald eagles at Swan Lake. Assessment of non-listed species is outside the adopted scope of this DEIS.*

*To evaluate all aspects of the bald eagle, Swan Lake and all habitats and other species on which it depends, or with which it relates, may be beyond the analysis required under SEQRA. Nevertheless, the NYSDEC did complete a comprehensive analysis and modifications to the proposal were made based on that information. The food web for a top tier predator like the bald eagle is multifaceted and extremely complicated. A study of the kind suggested in the comment generally requires years of scientific research where conclusions may be inconclusive at best. The management guidelines for most protected species (including those for the bald eagle) incorporate the results of this type of rigorous scientific study by design. If the guidelines are followed, the methods recommended by the scientists who carried out these types of studies is, by default, incorporated into the mitigation.*

*The agency charged with the protection of this species has detailed information on the full range of eagle habitat requirements including those representing nesting (nursery habitat is not a term generally applied to avian fauna), foraging, roosting and wintering as it pertains to population dispersal. Actual population dynamics and modeling of such is generally beyond the scope of the assessments required under SEQRA. All pertinent habitat types represented by Swan Lake and its surrounding habitat were considered by NYSDEC Staff when assisting with the development of the mitigation plan for the eagles at Swan Lake. In conjunction with the efforts of the USFWS, those put forth by the NYSDEC have been effective in protecting this species as can be attested to by the fact that the bald eagle will be removed from the ranks of those listed under the Federal Endangered Species Act.*

*The DEIS contains information regarding the project site (including existing vegetation) and Swan Lake. The Applicant was not required to access adjacent land owners properties to review the habit potential present there, but was not prohibited from doing so either. Nonetheless, the NYSDEC did take a hard look at the larger landscape, habitat needs of the Bald Eagle and all critical habitat on the project site that could be impacted by the Proposed Action (roosting trees) as well as the critical habitat (nest trees) recommended for protection by specific management guidelines in protecting bald eagles were visited and their protection incorporated into the bald eagle mitigation plan developed specifically for the Swan Lake eagles as evidenced by the inclusion of distance buffers around nest trees and forested buffers along the lake shore to protect roosting and foraging habitat.*

*The proposed (i.e. draft) scope of the DEIS and the areas to be studied were presented for public review and comment prior to adoption of the Final Scope by the lead agency, as required by SEQRA. The purpose of developing a scoping document within the SEQRA process is to facilitate the development of the EIS by focusing the DEIS document on the specific areas of environmental concern for each specific project proposal, as identified by the Lead Agency and all Involved and Interested Agencies through the process of public review. The Final Scope of the Swan Lake Estates DEIS defines all areas that are required to be examined by the Applicant.*

*The Final Scope for this project also outlines items that need not be addressed within the DEIS, including all items which were determined by the Lead Agency to have no potential for any significant impacts. Section 6.0 of the DEIS lists all of these items, and Section 6.11 of the DEIS (Impacts on Non-listed Plants and Wildlife) presents documentation that no significant impacts to non-listed plant and animal species are expected from the proposed action.*

*New York courts assign discretion in determining the scope of SEQRA evaluations to the agencies and governmental bodies involved. In Aldrich v. Pattison<sup>1</sup>, the court stated:*

*“SEQRA allows an administrative agency or governmental body considerable latitude in evaluating the environmental impacts and alternatives discussed in an environmental impact statement to reach a determination concerning a proposed project. . . [t]hus the general substantive policy of the act is a flexible one. It leaves room for a responsible exercise of discretion, and does not require particular substantive results in particular problematic circumstances.”*

**Comment 3.1-57 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Recovery plan references. Instead of providing a thorough and valid analysis and evaluation regarding the references to the Bald Eagle Recovery Plan (reproduced in part in the appendix of the DEIS) the DEIS instead extracts bits of information out of context from the Recovery Plan in effort to justify its claims that there will either be no impacts on the eagles at Swan Lake, or that all impacts will be completely mitigated. Neither claim is well documented. Two examples of this include: a) Discussions surrounding nest “D” and its apparent abandonment-- not withstanding information in the Recovery Plan which states that nests may be returned to after many years of apparent ‘abandonment’ and b) The presentation of misleading statements regarding the ability of eagles to become less sensitive to human disturbance- a subject which is by no means conclusive if one reads the entire Recovery Plan. There is a ‘level of disturbance’ point at which eagles will cease to nest at Swan Lake-- and at which they will cease to occupy the lake at all. The DEIS contains no rigorous discussion of this subject--which should include a complete assessment of cumulative impacts on the entire Swan Lake habitat system.

**Response 3.1-57:** *Refer to Response 3.1-57. The Bald Eagle Recovery Plan referenced in the DEIS is dated 1983 and is no longer used as preferred document for the management of the bald eagle. The new National Bald Eagle Management Guidelines (May 2007) is the most recent in a series of documents used by the Federal and State governments to protect the species.*

*Information presented in the DEIS on nest abandonment is that commonly used by management agencies. A nest unused for five consecutive years is considered abandoned. As documented in the DEIS, impacts to the area surrounding nests D and E originally related to the Lake Marie Subdivision proposal are no longer relevant.*

*Since the time of its publication the body of evidence indicating that certain pairs of bald eagles are able to adapt to human activity has grown substantially. Documented cases of eagles nesting closer and closer to the humans are more common each year as the*

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<sup>1</sup> Aldrich v. Pattison, 486 N.Y.S. 2d 23, 107 A.D. 258 (1985).

*eagle population expands and nesting pairs search for viable habitat to raise offspring. The new USFWS Guidelines state "During the breeding season, bald eagles are sensitive to a variety of human activities.*

*However, not all bald eagle pairs react to human activities in the same way. Some pairs nest successfully just dozens of yards from human activity, while others abandon nest sites in response to activities much farther away. This variability may be related to a number of factors, including visibility, duration, noise levels, extent of the area affected by the activity, prior experiences with humans, and tolerance of the individual nesting pair."*

*It is acknowledged that at a certain point, the level of human disturbance in the vicinity of an existing nest can cause a nesting pair of eagles to not return. The intention of the mitigation plan developed by the Applicant in close coordination with raptor experts at the NYSDEC is to avoid this outcome. The best and most conservative information currently available was implemented into the project's mitigation plan, the sole purpose of which is to protect the nesting eagles from the human activity resulting from the construction and inhabitation of the Proposed Action.*

The Department conducted a complete and comprehensive analysis of the potential cumulative impacts of this project, and known proposed developments proximate to Swan Lake, and concluded that the mitigation plan developed by the applicant in coordination with Department staff will be protective of bald eagles and their habitat on Swan Lake.

**Comment 3.1-58 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Additional impacts and effects on roosting, feeding, nesting, etc. from increased levels of noise and lighting as a result of development.

**Response 3.1-58:** *The NYSDEC has requested that the Applicant move the edge of the disturbance back and additional 50 feet to 150 feet from the lake shore. The Applicant has agreed to do so and amended the site plan accordingly. This was done in an effort to further limit any noise and visually related disturbance to the eagles utilizing the lake area.*

*In addition, the Applicant has agreed to a construction schedule that will limit outdoor construction activities and the associated noise and visual impacts, to a work window that would permit construction from May 16 to December 31.*

**Comment 3.1-59 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Scoping Document requirements are not met by the DEIS. The Scoping Document calls for a description of vegetation and wildlife on the project site and Swan Lake. This project involves the direct loss of approximately 33 acres of existing habitat. Even the minimal amount of information provided is so cursory that it is virtually useless for purposes of impact evaluation. Until this information is provided, potential significant impacts cannot be evaluated and effective mitigation cannot be developed.

**Response 3.1-59:** *Refer to Responses 3.1-56 and 3.1-57. Both NYSDEC and TMA biologists have walked the site and reviewed the existing habit. The Eagle Mitigation Plan considered the observations made during those site walks and subsequent correspondence with NYSDEC biologists concerning the site plans. Further details related to habitat would not result in a modification of the proposed mitigation as all*

*significant eagle habitat has been identified and impacts to it avoided, minimized and mitigated through the establishment of nest tree and lake shore buffers.*

**Comment 3.1-60 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Species of conservation concern, in addition to the bald eagle, are likely to be found on this site and these are not even mentioned in the DEIS. Under New York and federal law, there has been no onsite analysis or evaluation of the presence of these species on the project site. Only the bald eagle is mentioned in the text of the DEIS as a species of concern. Because of specific bald eagle high quality habitat requirements, it is even more likely that such habitat supports additional plants and animals of conservation concern. This is further supported by evidence in the project records which demonstrates that the site has remained largely undisturbed for over a hundred years.

**Response 3.1-60:** *The information identified in the comment is outside of the requirements specifically set forth in the project's DEIS Scope. The potential for impacts on non-listed plants and wildlife were not studied because no significant adverse impacts on such species present on the site are expected. The project preserves large tracts of undisturbed land as the Proposed Action incorporates only large lots, each with a minimal area of land to be cleared for siting the home and septic field. This is made possible by the Applicant's willingness to construct less than half the residential units allowed by local zoning.*

*Other protected species were not identified by the regulatory authorities in charge of their protection and none were observed during the numerous site visits by either TMA staff or NYSDEC biologists.*

**Comment 3.1-61 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Provision of this additional information is appropriate as documented by the following: The Environmental Conservation Law (ECL) of New York State regulates wildlife habitat protection. Section 9 of the ECL is designed to protect rare plants; sections 11-0535 and 11-0536 protect at-risk fish and wildlife. Under SEQRA, Parts 1 and 2 of the Environmental Assessment Form (EAF) contain questions pertaining to potential impacts of a project on both protected species (threatened and endangered) and non protected species (EAF Part 2).

**Response 3.1-61:** *Due to the large percentage of the site that is to remain undisturbed, the Full Environmental Impact Form (EAF) for the project stated that there would be no potential for significant impacts to non-endangered species. This assessment was upheld during the development of the scope for the DEIS.*

*The impacts on endangered and threatened species was also reviewed and the only species that the project was determined to potentially impact was the bald eagle. An impact study was completed and a mitigation plan was developed to offset the potential impacts identified. All of this was documented in the project DEIS.*

**Comment 3.1-62 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** A listing of all plants and animals of conservation concern should be provided in the DEIS. "Conservation concern" includes the following:

- a. Endangered or Threatened under the federal Endangered Species Act,
- b. NYS list of Endangered, Threatened, Rare, or Special Concern species (animals),

- c. NYS list of Endangered threatened, rare, and exploitably vulnerable species (plants),
- d. NYS Comprehensive Wildlife Strategy ([www.dec.state.ny.us](http://www.dec.state.ny.us)),
- e. S1, S2, or S3 by the New York Natural Heritage Program,
- f. Regionally rare, scarce, declining, or vulnerable in Kiviak and Stevens (2001),
- g. NYNHP Rare plant status list ([www.nynhp.org](http://www.nynhp.org)).

**Response 3.1-62:** *The wildlife impacts were reviewed during the SEQRA scoping process. A listing of animals of "conservation concern," or a list of regionally rare, declining, or vulnerable species was not considered to be necessary due to the identified impacts to the property and the surrounding areas. As such, further assessment of potential impacts to these species was specifically not required in the DEIS Scope. It is noted, however, that a major mitigation measure voluntarily adopted by the Applicant was to make the minimum lot size approximately twice as large as required by applicable zoning, thus resulting in a significant reduction in potential destruction of habitat.*

**Comment 3.1-63 ( Letter 18, Karen Schneller-McDonald, February 21, 2007):** Additional species information. The DEIS should include information commonly provided at this stage of SEQRA impact assessment, including:

a. discussion of habitat requirements and impacts on all birds of conservation concern; the Breeding Bird Atlas for New York State identifies a number of species of conservation concern in the vicinity of this site, including raptors and warblers. The DEIS mentions a few common species without putting them into the context of the area's biodiversity, or mix of common species, invasive species, and species of conservation concern. A breeding bird survey should be conducted by a qualified professional during the late spring/early summer.

**Response 3.1-63:** *See Responses 3.1-60 was 3.1-61 and 3.1-61 was 3.1-62.*

**Comment 3.1-64 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Several species (of reptiles and amphibians) of conservation concern are likely to use this site, and this requires considerably more information in the DEIS - including information on any nearby or adjacent vernal pools and their value for pool-breeding amphibians.

**Response 3.1-64:** *Refer to Responses 3.1-56, 3.1-61 and 3.1-62.*

**Comment 3.1-65 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** A rare plant survey should be conducted. The NYS Natural Heritage program Rare Plants Status report provides extensive information on all species of conservation concern.

**Response 3.1-65:** *Refer to Responses 3.1-56, 3.1-61 and 3.1-62.*

**Comment 3.1-66 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** The DEIS does not comply with the narrowly tailored Scoping Document, in its lack of adequate description of impacts on Bald Eagles, and it's completely inadequate assessment of existing vegetation, habitat and other wildlife - and subsequent impacts on Bald Eagles.

**Response 3.1-66:** *The Scoping document specifically omitted assessment of potential significant impacts on vegetation and non-listed wildlife. The eagle mitigation plan and additional mitigation presented in the DEIS was based on an assessment of the habitat by the Applicant and the NYSDEC staff and knowledge of the Swan Lake Eagles gathered by the NYSDEC over previous nesting seasons.*

**Comment 3.1-67 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** DEIS Section 3, focuses almost entirely on the potential impacts to the Bald Eagle nesting, perching and roosting habitat. The DEIS does not clearly identify where the Bald Eagle perching and roosting locations are in relation to the subdivision proposed lots (Lots 3-12).

**Response 3.1-67:** *Local perching and roosting habitat exists along the shores of Swan Lake. Eagles generally prefer large trees from which they can view their nest or forage. Trees that fall within this category are located along the lake shore on the project site. In order to protect these resources, The Applicant has extended the area within which trees will remain undisturbed on lots 8-12 from 100 feet to 150 measured from the lake shoreline. The 100 foot buffer remains for all other shore line lots with the exception of Lot 7. The configuration of this lot allows for a minimum setback of approximately 80 feet.*

**Comment 3.1-68 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** We have observed the red-shouldered hawk (*Buteo lineatus*), a New York State Special Concern Species, on several occasions in the vicinity of Swan Lake (March 2006-February 2007). In New York, this species is dependent upon large tracts of wetland and upland forest. It has been classified as Special Concern due to habitat loss (e.g., deforestation, forest fragmentation), and it is regarded as highly sensitive to human disturbance (NYSDEC, 2007). Wetland LW-22, which borders the northwestern corner of the Swan Lake Estates parcel, is a 55.4-acre forest/shrub riparian wetland situated within a large matrix of upland forest including Swan Lake Estates. LW-22 and the adjoining woodlands appear to provide suitable breeding habitat for redshouldered hawks. The DEIS states that LW-22 will be protected with 100-foot buffer; however, should red-shouldered hawks be nesting in LW-22 or in adjacent area, 100 feet is unlikely to be adequate protection from disturbance where the forest has been fragmented by subdivision (see Crocoll 1994). Surveys for breeding red-shouldered hawks should be conducted to determine if there is the potential for Swan Lake Estates to have an adverse effect on this declining raptor.

The DEIS should specifically address the potential for the occurrence of other endangered, threatened, special concern, or New York Natural Heritage Program-tracked rare animals and plants.

**Response 3.1-68:** *The red-shouldered hawk, as noted by the commentator, is New York State listed as a species of special concern, not threatened or endangered. During site visits by both the Applicant's consultants and the NYSDEC, no red-shouldered hawks or nests were observed.*

*The project as proposed disturbs less than 25% of the total acreage of the site and should minimize any impacts to the wildlife using the property, including the red-shouldered hawk. As a result, significant impacts to this avian species or other fauna using the site would no occur.*

*Other than the bald eagle, neither the NYSDEC nor the USFWS have identified protected species occurring on or in the vicinity of the project site.*

**Comment 3.1-69 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** Bald eagles derive most of their diet from fish and, to a lesser extent, waterfowl (Stalmaster, 1987; Thompson et al., 2005; Watson et al., 1991). It has been well demonstrated that residential development adjacent to lakes increases turbidity from erosion and run-off and creates eutrophic, low-oxygen conditions primarily from septic effluent and stormwater run-off. These water quality impacts can have dramatic effects on aquatic organisms including vegetation, amphibians, and fish (Radomski and Goeman, 2001; Taillon and Fox, 2004; Woodford and Meyer, 2003). Large fish species typically preyed upon by bald eagles [e.g., large-mouthed bass (*Micropterus salmoides*), yellow perch (*Perca flavescens*), American eel (*Anguilla rostrata*)] are often in the upper levels of the lake ecosystem food chains and therefore are most vulnerable to any changes to lower trophic levels, i.e., vegetation, insects, and amphibians. For example, the growth of the exotic invasive aquatic plant, water chestnut (*Trapa natans*), which is already extensive in Swan Lake, would be facilitated by increases in nitrogen and phosphorus. Water chestnut is known to lower oxygen levels in lakes, which detrimentally affect fish and other aquatic organisms. It is also a poor food resource for waterfowl and out-competes native vegetation that provides important forage for waterfowl (Hummel and Kiviat, 2004). As with increased turbidity, dense mats of water chestnut could also directly affect resident bald eagles' ability to visually detect prey. Based on typical bald eagle habitat preferences, Swan Lake is relatively small but the small size is perhaps compensated for by abundant food resources. Maintaining the existing water quality may therefore be critical to the long-term health and reproductive success of the bald eagles at Swan Lake.

**Response 3.1-69:** *The project specific SWPPP has been accepted by the NYSDEC. By design, the SWPPP, when implemented, will protect down stream water resources from sedimentation resulting from erosion.*

*With regard to the water chestnut, Swan Lake conditions prior to construction of the Proposed Action support the growth of this aquatic plant species. Its potential to grow in the lake post-project development will not be affected by the Proposed Action.*

**Comment 3.1-70 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** We recognized that Swan Lake has been a popular seasonal recreation area for decades, which did not deter the eagles from inhabiting it, or from routinely producing successful clutches. A few people who live on the lake use motorboats. However, the DEIS acknowledges two documented instances at Swan Lake where human disturbance has led to the mortality of eaglets and the abandonment of a nest. What makes Swan Lake unique compared to other privately-owned recreation lakes in the region is that its shoreline is largely undeveloped, except for a portion of the southern shore. The upper portion of Swan Lake (defined as the section northwest of Kelly Bridge Road), in particular, shares similarities in landscape context and character to other documented lacustrine Bald Eagle nesting sites in southern New York, most of which are water supply reservoirs with undeveloped shore and recreation that is limited to fishing (NYSDEC the NYSDEC, personal communication). Unlikely by coincidence, the adult and juvenile Bald Eagle of Swan Lake prefer the upper portion of the lake (from the southern peninsula near proposed building lot 7 northward almost to Townsend Road) for nesting and most of their foraging and resting activities. The proposed location of Swan Lake Estates occupies a 55 acre area more or less in the middle of this upper portion of the lake's northeastern shore. Swan Lake, affecting approximately 3,000 feet of shoreline. Maintaining undeveloped shoreline was cited as the most critical component of Bald Eagle management in Maryland (Beuhler et al., 1991; Chandler et al.,

1995), and regulating shoreline land use had been a major focus in State and federal Bald Eagle protection efforts nationally.

**Response 3.1-70:** *Refer to Response 3.1-1. The Applicant will also eliminate the use of gasoline powered motorized vessels on the lake thereby limiting shoreline activities to those related to the proposed docks and electric, human or wind powered vessels.*

**Comment 3.1-71 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** The DEIS generally acknowledges that Swan Lakes Estates will have some impacts to the bald eagles, primary in the form of increased noise from construction and home occupancy, visual impacts to the shoreline, and permanent alteration of adjacent forest. We agree that increased noise and human disturbance from Swan Lake Estates will impact the Bald Eagles, potentially causing the resident pair to abandon nesting at Swan Lake altogether. The DEIS provides a Bald Eagle Mitigation Plan (AJM Eagle Plan), which was developed with input from the NYSDEC to mitigate the potential impacts increased levels of noise and visual disturbances from the nesting area (nests B and C located on the opposite shore from Swan Lake Estates.) On several occasions, local residents have told DEC that the main breeding nest for at least the last three years, Nest A, is no longer present. This was reported to Peter Nye of the DEC in September 2006. The DEIS does not acknowledge the loss of this nest. While some of the mitigation measures are appropriate, e.g., prohibiting the use of gasoline-powered water craft on all of Swan Lake, overall plan falls short of adequately offsetting the potential impacts.

**Response 3.1-71:** *Refer to Response 3.1-2.*

**Comment 3.1-72 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** First, the AJM Eagle Plan prohibits any alteration of the vegetation along the shoreline, presumably to protect perching and roosting areas and limit disturbance within view from nests B and C, but it does not call for the regulation of activity along shoreline. Owners of lots 3-12 are provided with the option of installing floating docks. These docks and associated human activity will be clearly visible from the nesting area and may present a disturbance to the bald eagles. The suitable perches along the shoreline between lots 3-12 will not be altered as per the mitigation plan but will be rendered less suitable for bald eagles by the human activity on the docks and along the surrounding shoreline. While the resident bald eagles are clearly accustomed to the current level of recreation on the lake, most residents concur that perched adult and juvenile eagles are easily flushed (i.e., disturbed from resting or foraging perches) by human activity, often from distances of up to 1000 feet or more. Being flushed from perches frequently can lead to physiological stress (especially in the winter) and interfere with foraging.

**Response 3.1-72:** *Refer to Response 3.1-67. The Applicant has incorporated the proposed buffer area to limit disturbance to the habitat along the shoreline of the lake. It is the belief of the Applicant (and the NYSDEC) that this, along with the other measures proposed, will offset potential project related impacts to the Swan Lake bald eagles sufficiently enough to reduce them to a level where the eagles will not be significantly affected. It should be noted that a dock, if installed by the property owner, would be for seasonal use as would the dock on the Common Lot. As a result, impacts during the winter would not occur because these floating docks would be removed prior to the lake freezing over. In addition, activity along the shoreline and on the docks would not occur throughout the day, nor would every dock be in use at the same time during the day. Should an eagle fly from a tree on account of nearby human activity, there would remain available roost habitat both on the project site and off-site where the eagle*

*could alight undisturbed, including those trees which exist within the 31 acre conservation easement that will be established by the applicant.*

**Comment 3.1-73 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** The DEIS states that Swan Lake freezes over in winter and the Swan Lake eagles leave the area. Swan Lake residents report eagles are fishing in these open water areas when the lake is frozen. Eagles are present at Swan Lake throughout the year. Residents report that the shoreline along the proposed development (Lots 3-12) is a commonly used perching area, most likely because it is opposite the nesting area and provides an unobstructed view of the nest and fishing grounds.

**Response 3.1-73:** *Refer to Responses 3.1-9 and 3.1-67.*

**Comment 3.1-74 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** Second, the AJM Eagle Plan does not include measures to reduce or mitigate the impacts of construction-related noise and visual disturbance. The clearing, grading, and construction of 21 lots will be a major disruption to the environment of Swan Lake. Section 3 of the DEIS assumes that the Bald Eagles will relocate to 'quieter areas' during construction, yet does not identify where those quieter areas are located or analyze eagle behavior in comparable situations. The DEIS does not consider that relocating could lead to nest failure or increased physiological stress depending on the timing of the construction. It is also assumed in Section 3 that the eagles will return to the shoreline after construction and continue to use it despite the increase in disturbance from the new homes.

**Response 3.1-74:** *Refer to Responses 3.1-1 and 3.1-6.*

**Comment 3.1-75 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** As part of the mitigation, a 31-acre parcel that contains bald eagle nest trees B and C is to be permanently protected through a conservation easement. We believe that the permanent protection of this parcel is critical; however, we feel that it is misrepresented as a mitigation measure because it 1) does not specifically mitigate any impacts associated with Swan Lake Estates; and 2) does not provide adequate protection for the entire documented nesting habitat at Swan Lake. The 31-acre parcel is located over 1,500 feet from Swan Lake Estates and is not to be altered by the current development plans. The potential impacts to this portion of the bald eagle habitat will be primarily in the form of visual and noise disturbance from shoreline recreation and activity on the open water. To mitigate these impacts we recommend that all lake activity be prohibited within a substantial distance of nest trees A, B, and C when nests are active (Nye, 2000; Stalmaster, 1987; see discussion below). NYSDEC requires similar protection measures on bald eagle nests elsewhere.

**Response 3.1-75:** *Refer to Responses 3.1-1 and 3.1-15 regarding the conservation easement.*

*At the request of the NYSDEC, the Applicant had agreed to an additional mitigation measure to offset existing and future impacts associated with the use of boats, canoes and kayaks on the lake. "RESTRICTED AREA" signs were to be installed on the lake waters at or near the agreed primary protection zone limit (350 feet) around the three nest trees on the 31 acre parcel to be protected by a conservation easement. (Refer to Appendix E of the Bald Eagle Mitigation Plan in the DEIS for a copy of the "RESTRICTED AREA" sign to be used.). The signs were to have been mounted on steel poles (or similar) driven into the lake bottom to a depth sufficient to prevent them from*

*being dislodged by the formation and movement of ice on the lake. This method was preferred by the NYSDEC over anchored buoys to be a more permanent and less intrusive solution, i.e. there would be no need to put in and take out buoys every year.*

*Upon further consideration, it was decided that this approach would present an unacceptable safety hazard. As a result, permanent signs will be placed along the lake shoreline around the nest trees as needed. NYSDEC personnel would install the required signs in cooperation with the Land Trust and outside of the bald eagle nesting period.*

**Comment 3.1-76 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** The 31-acre parcel contains only three of the five known nest trees (four of which still contain nests). The two nests (D and E) that occur in the Lake Marie Road section of Swan Lake were used for at least four of the eleven years that bald eagles have been known to nest at Swan Lake. These nests are located over 3,000 feet from Swan Lake Estates and are well buffered by forest. They are unlikely to be impacted by the development or lake recreation, and, in light of the potential disturbances associated with Swan Lake Estates, may become active again. The threat of a substantial increase in human activity near nest trees B and C makes it critical that all documented and potential nesting habitat be protected at Swan Lake. Suitable nest trees are typically limited in the environment (Fraser, 1988), and it is important for bald eagles to have access to alternate nesting trees, especially in areas affected by human disturbance. The DEIS notes that nest tree D will soon be considered inactive since it has not been used in five years. Although this a federal and state policy, we encourage regulatory agencies to re-evaluate their decision regarding nest tree D in the context of Swan Lake Estates and its potential impacts to other nesting areas. Nest trees D and E and the surrounding forest may become the only suitable nesting area on Swan Lake in the future. The developer chose not to include nests D and E in the conservation easement, and we understand that the entire Lake Marie parcel (108 acres) has been sold.

**Response 3.1-76:** *Comment noted. Nest trees D and E were not included in the conservation easement because the Applicant does not own the land on which they stand, but if included would enhance overall protection of existing and potential Bald Eagle habitat and decrease the potential for a "taking" as a result of cumulative impacts of the proposed and potential future development. While Nest D may become inactive, it does not mean that the present or future owner will be permitted to remove the tree it is built in or negatively impact the surrounding environment. The NYSDEC will continue to protect nest trees D and E at a level commensurate with their value as nesting habitat.*

**Comment 3.1-77 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** To help preserve the integrity and suitability of the shoreline along Swan Lake Estates, prohibit the installation of docks while still permitting foot access to the lake. Docks not only represent a new structure in the lake environment but also encourage more sustained human activities (e.g., picnicking, sunbathing, fishing, etc.) that could cause greater disturbance to the bald eagles, as opposed to onshore fishing or occasional launching of a canoe.

**Response 3.1-77:** *While the installation of docks in the lake as proposed will introduce more human activity, the Applicant has reduced the number of docks that might have been proposed, and will impose restrictions on the types of boating activities permitted on the lake and restrict access to the area within the Primary Zone around nest trees A, B, and C to offset the increases in activity. The record also makes clear that the proposed mitigation measures will also minimize potential impacts.*

**Comment 3.1-78 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** NYSDEC guidelines recommend a 330-750 foot primary buffer around a nest tree, and where there is human activity in full view of the nest NYSDEC recommends up to a 1300 foot buffer with the actual buffer width depending on site conditions and the tolerance of an individual pair of eagles. Swan Lake nest trees A, B, and C are near the lake shoreline where human activity on the lake is fully visible to eagles at the nest trees. Although the current nesting pair tolerates the existing level of human activity, we are unable to predict the eagle-human interactions with increased levels of recreation and possible change of one or both members of the eagle pair. Therefore, we prefer to err on the side of caution and we recommend a buffer greater than 750 feet. We also recommend independent professional observation of the behavior of the nesting eagles this year to allow a more scientific setting of the buffer width.

**Response 3.1-78:** *On Building Lots 8 through 13 the tree clearing limit has been extended to 150 feet from the edge of the lake, except for the hand cleared trails for each lot's pedestrian access to the lake. On the remainder of the lake side lots this distance is 100 feet with the exception of Lot 7 where the distance would be approximately 80 feet as a result of the physical constraints of the area. These measures are expected to provide an adequate visual buffer that would avoid disturbance of the eagles.*

*The distance from the active nest trees to the proposed nearest dock is approximately 1,450 feet and to the proposed clearing limit is over 1,500 feet. The vast majority of the development will occur at a distance of over a third of a mile from these nest trees, well beyond the Primary Protection Zone and within the Secondary Protection Zone as defined in the Guidelines for Managing Bald Eagles document (dated November 200) and more than twice the greatest distance for buffers as set forth in the National Bald Eagle Management Guidelines (dated May 2007).*

**Comment 3.1-79 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** The buffer zone around the nest trees should be demarcated with buoys, or with stakes when the lake is frozen. This should be conducted in consultation with NYSDEC on an annual basis, as the nesting period can vary.

**Response 3.1-79:** *Refer to Response 3.1-75.*

**Comment 3.1-80 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** In addition to banning gasoline-powered watercraft, snowmobiles should be prohibited from the upper portion of Swan Lake and its shores. The use of snowmobiles on Swan Lake coincides with the early stages of the nesting period. It is also critical for bald eagles to conserve energy at this time of year, as they are stressed by cold temperatures and typically limited by food resources. The DEIS is inaccurate in stating that the bald eagles forage elsewhere due to freezing of the lake.

**Response 3.1-80:** *Refer to Response 3.1-9. While snowmobilers have been using Swan Lake for numerous years and the pair of eagles currently nesting on the 31 acre parcel have maintained their nesting success in the presence of this human activity, the Applicant will limit such use of the frozen lake through the posting of signs prohibiting motorized vehicle (e.g. snowmobiles, all terrain vehicles) access at the access points.*

**Comment 3.1-81 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** Coordinate with NYSDEC to impose an appropriate timing restriction for construction. The most critical period

to avoid disturbance is during nesting season (February to August); however, December and January can also be critical, especially in cold winters. The open-water winter refuge under Kelly Bridge is close enough to Swan Lake Estates that construction noise may interfere with bald eagle foraging.

**Response 3.1-81:** Refer to Responses 3.1-1 and 3.1-9.

**Comment 3.1-82 (Letter 22, Joan Kittredge, February 25, 2007):** The Bald Eagles and their entire, year round habitat -- which includes the Lake and surrounding wetlands, vegetation and other wildlife species -- need to thoroughly described and evaluated as one ecosystem.

**Response 3.1-82:** Refer to Responses 3.1-9, 3.1-32 and 3.1-56.

**Comment 3.1-83 (Letter 22, Joan Kittredge, February 25, 2007):** Absence of breeding nest A is not included description of Bald Eagle habitat. How will the loss of the primary nest impact the Bald Eagles in the upcoming breeding season? What mitigations will be put in place to address possible new location for breeding nest A? How will the proposed construction for the Kelly Bridge Road Subdivision permanently affect the Bald Eagles ability to breed and survive?

**Response 3.1-83:** Refer to Response 3.1-2.

**Comment 3.1-84 (Letter 24, Cora Edwards, February 26, 2007):** In 2004, there were 6 eagles' nests at Swan Lake. According to a statement Mr. Murolo made in August 2005, the eagles nest on the Kelly Bridge Road subdivision location was "destroyed by raccoons". Now in 2007 the number of nests is down to four, of which two nests (B and C) have been included in an unsigned conservation easement with the Delaware Highland Conservancy. The breeding nest A, (which the breeding pair has used for at least the last three consecutive years by the eagles at Swan Lake for hatching eggs) disappeared from its tree and was reported as such to the DEC-Albany Endangered Species Unit in September 2006.

**Response 3.1-84:** Eagles may build nests at many different locations within their life time. They usually return to the same area from year-to-year, but may build a new nest in a different tree. These changes occur naturally, with eagles determining the locations they prefer. The old nest may be temporarily or permanently abandoned. Also refer to Response 3.1-2 for additional information regarding the eagle nests on Swan Lake..

**Comment 3.1-85 (Letter 24, Cora Edwards, February 26, 2007):** In the final Hudsonia, Ltd. Report on the eagle habitat at Swan Lake, specific references to the nest tree A are made "because the tree is still standing and should be protected and buffered in case the eagles build a new nest in that tree. The fact that there was a nest in that tree indicates the suitability (and potential value) of that tree for a future nest". E-mail from Erik Kiviatt to Cora Edwards February 25, 2007 included in Appendices.

**Response 3.1-85:** Nest trees A, B, and C are in the 31- acre easement parcel that will be signed over to the Delaware Highland Conservancy at the completion of the permitting process. This easement will protect all three trees and all other habitat on the parcel in perpetuity.

**Comment 3.1-86 (Letter 24, Cora Edwards, February 26, 2007):** "Biologist make a distinction between breeding territories (areas around the nest that are actively defended against intruders)

and a raptor's home range (all the land a bird uses, including areas that may overlap with home ranges of other individual birds)." The Raptor Almanac by Scott Weidensaul 2004.

The average breeding territory site for the Bald Eagle is 10.4 square miles; average hunting territory 25 square miles. Brown and Amadon 1968; Craighead and Craighead 1956; Johngard 1990 p. 105 of the Raptor's Almanac.

According to public comment made at the DEC public hearing on Feb. 06, 2007, residents have seen eagles at the Route 55 end of Swan Lake and at the opposite end, over Heinle Road, although it is not clear if they are identifying the same resident eagles which breed at Swan Lake.

**Response 3.1-86:** *Comment noted. Refer to Responses 3.1-9, 3.1-32 and 3.1-56.*

**Comment 3.1-87 (Letter 24, Cora Edwards, February 26, 2007):** The documents submitted by Mr. Anthony Murolo specifically mention disturbances that have already occurred to the eagles nesting habitat at Swan Lake. The likelihood of these disturbances increasing with the addition of 20 homes are also mentioned. However, the Bald Eagle Mitigation Plan, submitted on Mr. Murolo's behalf do not specifically outline how disturbances to the eagles will be minimized with the introduction of 20 new homes, additional guesthouses, garages, driveways, impermeable surfaces, slopes, loss of forested areas to lawn, pesticides, fertilizers, increased home and street lighting in an area that currently has no street lights, leach fields and "nutrients" in the leach fields, wells, septic tanks and increased levels of human activity in an area that is commonly used for the eagles perching and foraging activities (lots 3,4,5,6,7,8,9,10,13,14), other than to say that paths will be hand-cut and restricted access sign will be placed in the water around the breeding nests in the conservation easement. The 'common lot' for recreation activities is still located in the same place it was as the original site division plans with visual distance of nests B and C, and adjacent to the stream and wetlands areas.

**Response 3.1-87:** *As required under SEQRA, a DEIS must identify, and present mitigation to offset, significant impacts that would result from a proposed project. The DEIS, and associated Bald Eagle Mitigation Plan, developed by the Applicant in conjunction with the NYSDEC, for Swan Lake Estates includes measures intended to mitigate the impacts to the local bald eagles that would result from the development of the proposed 20 single family homes, the pavilion and facilities on the Common Lot (Lot 13) and all the associated infrastructure and amenities including the proposed docks. As noted previously, guesthouses will not be built.*

*Additional measures to further offset impacts to the eagles (i.e. extending the buffer zone along the shoreline on the lots closest to the nest trees) has been incorporated into the project as presented in this FEIS and depicted on the attached plans. As such, impacts from the entire development on the nesting eagle pair have been considered in developing the measures proposed to offset the impacts that could occur.*

*The proposed plan results in far less impact than would occur from any of the alternatives presented in the document that, by right and in compliance with the existing zoning, could be built on the property. In order to further reduce the potential impacts resulting from the development, the Applicant has modified the Proposed Action from its original submission to address concerns and comments expressed by the regulatory agencies and the public.*

*The development of the Common Lot will require an Article 24 , Freshwater Wetland permit for the installation of the dock and clearing of the path to the lake..*

**Comment 3.1-88 (Letter 24, Cora Edwards, February 26, 2007):** The insufficiencies of this 'mitigation' plan were addressed in a paper entitled: Commentary on Bald Eagle Mitigation Plan submitted by the DEC in March 2006, and the insufficiencies of this plan, for the most part, remain today. Two words from this Commentary were later incorporated onto Mr. Murolo's final eagle 'mitigation' plan: roosting and perching, although the areas where the eagles roost and perch at the Kelly Bridge Road Subdivision location were never clearly identified in any documents submitted by Mr. Murolo.

**Response 3.1-88:** *Refer to Responses 3.1-18 and 3.1-67.*

**Comment 3.1-89 (Letter 24, Cora Edwards, February 26, 2007):** The plan that AJM submitted for eagle protection is basically a yellow circle drawn on a map representing 750' foot primary buffer around the eagles' nests B and C, with restricted access signs to be placed in the water. Public Hearing Oral Comments by R. Wasson - Feb. 06, 2007. Access to this area in late spring and summer is already restricted to boat traffic, due to the surface of the lake being covered by invasive chestnut weed, making it nearly impossible to navigate a canoe or kayak into those waters anyway. Since the lowering of the lake level in 2005 by the developer for numerous reasons (in a citation by DEC Encon Officer Erik Templeton - August 2005), the water level in this area remains around 18"- 24" inches deep.

It is not clear how these proposed signs will actually do anything to protect the eagles from the negative impacts of the subdivision of 20 homes proposed on Kelly Bridge Road, well within the 10 mile breeding territory size, and just outside of the 1500' secondary buffer zone around the eagles nests.

**Response 3.1-89:** *Refer to Responses 3.1-18, 3.1-75 and 3.1-87. The installation of signs along the lake shore are meant only to further protect the nesting eagles from boating activity in the lake.*

**Comment 3.1-90 (Letter 24, Cora Edwards, February 26, 2007):** The recommendation made by the DEC to include Nests D and E in the proposed conservation easement have not been honored by the developer. Nest D and E have remained part of the Lake Marie Road parcel. According to the developer, that parcel has been sold. River Reporter Newspaper article dated Feb. 15, 2007. This is selectively adopting DEC recommendations.

**Response 3.1-90:** *As stated in the comment, the Lake Marie Road parcel has been sold to another owner. The Applicant no longer has any control over the future use of this parcel. Should any future owner decide to develop the parcel, they would have to go through a separate SEQRA process and any related protections to be afforded the eagle's nests can be determined at that time in conjunction with the appropriate regulatory authorities.*

**Comment 3.1-91 (Letter 24, Cora Edwards, February 26, 2007):** The 31 acres that are included in the conservation easement proposed (for Nests B and C) are "below road grade" according to the property description filed with Sullivan County Clerk's Office in Monticello, NY. That means that houses could not be built on this 31-acre parcel anyway, and therefore limited the commercial value of this specific parcel.

**Response 3.1-91:** *The 31 acre parcel is below road grade, however there are no rules or policies stating that houses or other structures cannot be built below road grade. In fact many buildings and developments have been constructed below the elevation of their existing nearby or servicing roadways.*

**Comment 3.1-92 (Letter 24, Cora Edwards, February 26, 2007):** It was not convenient for Mr. Murolo to include Nests D and E in the conservation easement as recommended by the DEC.

**Response 3.1-92:** *As previously stated, the Lake Marie Parcel was sold and is no longer part of the project. Refer to Response 3.1-90.*

**Comment 3.1-93 (Letter 24, Cora Edwards, February 26, 2007):** The DEIS on page 1-2 states: "There is no easements affecting the site". Therefore what does the 31 acre parcel mitigate?

**Response 3.1-93:** *The statement in the DEIS noted in the comment refers to existing easements including those that would be held by utilities, the Town or other entity and not the easement proposed by the Applicant for the protection of the 31 acre parcel.*

**Comment 3.1-94 (Letter 24, Cora Edwards, February 26, 2007):** The developer was aware of the existence of the eagles at Swan Lake, as there is a reference point with an arrow to the Eagles Nest (A) on the Land Survey Maps registered with the Sullivan County Clerk's Office with survey dated April 2004. This map was also signed by the Town of Liberty Planning Board chairman. However, the developer chose to indicate on the EAF dated December 7, 2004 that there were no endangered species present at Swan Lake. Even after receiving a corrected letter from the DEC Heritage Program- Albany in May 2005, the developer did nothing to remedy the situation and continued with construction activities without a single DEC permit at Kelly Bridge Road.

**Response 3.1-94:** *The Applicant has prepared all the documents required by the NYSDEC, the regulatory agency responsible for the protection of the bald eagle throughout the state, as they have been requested. Permit applications for the discharge of stormwater and impacts to the wetlands have been sought from the NYSDEC.*

**Comment 3.1-95 (Letter 24, Cora Edwards, February 26, 2007):** In the DEIS and AJM Eagle Plan, disturbances to the eagles due to increased human activity are only limited to visual impacts of the proposed subdivision of 21 lots with homes, leach fields, septic tanks, wells, drains, driveways, paths, docks and boat craft. The document does not look at the cumulative loss of 'available landscape' at Swan Lake for the eagles to continue to survive and breed in the future.

**Response 3.1-95:** *Refer to Responses 3.1-32 and 3.1-56.*

**Comment 3.1-96 (Letter 24, Cora Edwards, February 26, 2007):** According to the Raptor Almanac, " the quality of wintering habitat can mean the difference between survival and death, especially for immature raptors in their first year. It also greatly affects the following breeding season, especially for females; a meager winter may reduce her overall condition, cutting the number of eggs she can produce come spring".

It should be noted that the resident pair of breeding eagles at Swan Lake live at the lake all year around, and do not migrate to the Chesapeake Bay area as mentioned in the DEIS. Yet the DEIS conclusively states that Swan Lake freezes over in the winter (parts of the lake waters run freely under Kelly Bridge) and states that the eagles migrate to the Chesapeake Bay area in winter. How was this conclusion drawn without the benefit of the eagles at Swan lake having radio transmitters fitted to relay their flying patterns?

**Response 3.1-96:** Refer to Response 3.1-9 and 3.1-80.

**Comment 3.1-97 (Letter 24, Cora Edwards, February 26, 2007):** In the spring of 2006, three eaglets hatched from Nest A and were banded by DEC Endangered Species Unit. With Nest A no longer in existence, which nest will the eagles use in spring 2007 for breeding? How will proposed construction activities affect the next breeding cycle?

**Response 3.1-97:** Refer to Responses 3.1-2 and 3.1-6.

*Construction is not scheduled to occur during the breeding season in the lake front lots, therefore no effect is expected.*

**Comment 3.1-98 (Letter 24, Cora Edwards, February 26, 2007):** The site also supports large canopy trees, including white pine along the lake shore, which serve as roost trees for nesting Bald Eagles. "The DEIS and eagle plan do not indicate how this area of eagle habitat will be protected nor do they indicate on which lots those perching or roosting areas exist.

**Response 3.1-98:** Refer to Responses 3.1-18 and 3.1-67.

**Comment 3.1-99 (Letter 24, Cora Edwards, February 26, 2007):** The eagles have utilized a total of five large white pine trees on or in the immediate vicinity of the Swan Lake Shoreline. This is patently false. I myself have seen the eagles in so many locations and trees around the lake. This statement makes it appear that the eagles only utilize the trees where the nests are or used to be located.

*Response 3.1-99: The text in the DEIS pertaining to the five white pines are related to the trees that the eagles are utilizing for nesting. Eagles and other birds of prey are opportunistic and may roost in any tree along their flying routes. It is not practical to identify and survey every possible tree that the eagles have roosted in or may roost in. The Applicant has incorporated buffer areas on all lake front lots to protect the important perch and roost trees from disturbance.*

**Comment 3.1-100 (Letter 24, Cora Edwards, February 26, 2007):** The document states that the National Guidelines for managing Bald Eagles encourage land owners to work cooperatively with state and federal wildlife agencies. The US fish and Wildlife office in Cortland, NY has not received any response to two letters sent to the developer since 2005. This statement will have to be altered before another version is published or the developer actually does cooperate with US Fish and Wildlife Service.

The DEIS document states that "a number of changes were made to protect the nesting eagles from potential impact:

Relocated common dock: The maps included do not show where the dock was nor where the new location is.

Reduced the width of access paths: the original site did not show any access paths, therefore how could they be reduced?

Changed configuration of the paths to maximize the distance between them and the eagle nest trees across the lake: This does not take into consideration that the roosting and or perching trees are on those very lots.

Restricted Area Signs have existed at the 31-acre parcel since before the building of the access road at Kelly Bridge. Signs in the summer in the lake- those waters are not navigable due to the amount of chestnut weed on the surface of the lake water. The signs are needed in the winter when snow mobiles tracks show traffic right up to the 31-acre parcel.

**Response 3.1-100:** Refer to Response 3.1-3 regarding the USFWS's involvement in the SEQRA process.

*The full size drawing entitled "Wetlands Disturbance Details" prepared by Wasson Engineering and included in the DEIS depicts the location and size of the proposed docks and access paths. Docks have been included as part of the Proposed Action throughout the entire DEIS process*

*Refer to Response 3.1-67 regarding the comment on then protection of perch and roost trees.*

*Refer to Response 3.1-75 regarding the posting of warning signs around the nest trees on the 31-acre parcel.*

**Comment 3.1-101 (Letter 24, Cora Edwards, February 26, 2007):** The 31 acre easement preserves in perpetuity...."Until the conservation easement is signed, nothing is preserved in perpetuity.

**Response 3.1-101:** Refer to Response 3.1-15.

**Comment 3.1-102 (Letter 24, Cora Edwards, February 26, 2007):** The mitigation measures only identify nesting trees, not measures to protect the eagles habitat. Where is the documentation on how these measures will protect the "home range of the eagles at Kelly Bridge subdivision?

**Response 3.1-102:** Refer to Responses 3.1-32 and 3.1-56.

**Comment 3.1-103 (Letter 24, Cora Edwards, February 26, 2007):** Four of the five nest trees (ABC and E) are in areas of little or no recent disturbance. This is patently false, as the nest tree A is not longer situated in the tree, and has not been since was reported to DEC in September 2006. Nest trees D and E were not included in the conservation easement.

**Response 3.1-103:** The statement in the DEIS pertains to human disturbance (near Nest D) not the natural occurrence of a nest falling from a tree (Nest C).

**Comment 3.1-104 (Letter 24, Cora Edwards, February 26, 2007):** Many residents are occupied year around: How many? Swan Lake: page 3-3” Water levels do not accurately reflect that levels have been as low as 18” (not four to six) near the proposed development and the shoreline where eagles perch would require extensive alteration to accommodate individual docks and a “sandy beach” as noted in the home owner's Association by-laws.

*Response 3.1-104: Refer to Responses 2.0-5 and 2.0-6 regarding sandy beaches and docks respectively.*

**Comment 3.1-105 (Letter 24, Cora Edwards, February 26, 2007):** Interaction between eagles and humans: The word “interactions” is not defined. My own experience is that even canoeing in the area north of the “peninsula” lot #7 can disturb the eagles, so I do not canoe up there. If one canoe can disturb the eagles nest or perching in the peninsula, what will 20 homes and all the loss of available landscape do to the eagle habitat?

*Response 3.1-105: Interact is defined as “to act upon one another” and interaction is defined as “mutual or reciprocal action or influence” by Merriam-Webster OnLine. Refer to Response 3.1-87.*

**Comment 3.1-106 (Letter 24, Cora Edwards, February 26, 2007):** Recent observational data suggest that bald eagles are becoming more tolerant of human disturbance near nesting sites: How is that true at Swan Lake?

*Response 3.1-106: The statement establishes that a particular behavior has been observed in the bald eagle population. The fact that individuals of this species are modifying their behavior, adapting to disturbance, and/or becoming more tolerant of human interaction is information that can be considered in assessing and mitigating for impacts.*

**Comment 3.1-107 (Letter 24, Cora Edwards, February 26, 2007):** “Productivity in urban areas do not differ significantly from nest in more rural areas”. How does this apply to Swan Lake? The eagles are here before the proposed houses, not the other way around. The area of Kelly Bridge subdivision has been shown on a map of 1856 at the Sullivan County Clerk’s office to show that the wilderness area then and now is the same.

*Response 3.1-107: Refer to Response 3.1-106.*

**Comment 3.1-108 (Letter 24, Cora Edwards, February 26, 2007):** “The eagles appear to be unaffected by the habitation of existing residences” the eagles do not normally perch in the trees where existing residences; although they fly over those residences, they do not land.

*Response 3.1-108: Comment noted.*

**Comment 3.1-109 (Letter 24, Cora Edwards, February 26, 2007):** “Noise during the construction period may cause eagles to move to quieter areas: the area proposed for the subdivision is the quieter area, and during construction from May 2005- October 2005, the eagles were not seen at all, except on weekends when the construction vehicles were not around.

**Response 3.1-109:** Refer to Responses 3.1-1 and 3.1-6 for information on a construction window.

**Comment 3.1-110 (Letter 24, Cora Edwards, February 26, 2007):** Page 3-6 “Roosting areas will not be disturbed by 100 foot setback except for Lot #7” It has to be explained why Lot #7, will not have the same amount of setback, given this is the area most frequented by the eagles.

**Response 3.1-110:** Most of Building Lot No. 7 has a 100 foot set back. Only the driveway and the path to the lake are within the 100 foot Wetland Adjacent Area. As a result of the most recent meeting with NYSDEC, the driveway on this lot has been relocated to further reduce impacts. Refer to the attached plans.

**Comment 3.1-111 (Letter 24, Cora Edwards, February 26, 2007):** Disturbances are limited to noise and visual impacts, not to the “unalterable” changes in the landscape due to 20 additional homes, driveways, parking lots, impervious surfaces, leach fields, wells and impacts on water quality and fish supply, increased carbon dioxide emissions from lighting systems, and loss of available habitat.

**Response 3.1-111:** Refer to Response 3.1-87.

**Comment 3.1-112 (Letter 24, Cora Edwards, February 26, 2007):** “Nest D is considered inactive” although notes in the AJM file in New Paltz have requested that there is no activity near nest D until after Spring 2007. This is not indicated in the report “Impacts of the eagles and their roosting, foraging and nesting habitat resulting from the use of the lake and proposed docks, while not anticipated to be significant, will occur. What is the level that determines “significant”?

**Response 3.1-112:** Nest D remains inactive. However, the NYSDEC can make the determination that the nest should receive some level of protection should a proposal for development in the vicinity of the tree be submitted for review.

Significance is defined in Section 617.7c of the SEQRA regulations. That definition follows:

§617.7 Determining significance

(a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.

(1) To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact.

(2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.

(b) For all Type I and Unlisted actions the lead agency making a determination of significance must:

(1) consider the action as defined in subdivisions 617.2(b) and 617.3(g) of this Part;

(2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;

(3) thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and

(4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

(c) Criteria for determining significance.

(1) To determine whether a proposed Type I or Unlisted action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria in this subdivision. The following list is illustrative, not exhaustive. These criteria are considered indicators of significant adverse impacts on the environment:

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

(vi) a major change in the use of either the quantity or type of energy;

(vii) the creation of a hazard to human health;

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

(x) the creation of a material demand for other actions that would result in one of the above consequences;

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

(2) For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

(i) included in any long-range plan of which the action under consideration is a part;

(ii) likely to be undertaken as a result thereof; or

(iii) dependent thereon.

(3) The significance of a likely consequence (i.e., whether it is material, substantial, large or important) should be assessed in connection with:

(i) its setting (e.g., urban or rural);

(ii) its probability of occurrence;

(iii) its duration;

(iv) its irreversibility;

(v) its geographic scope;

(vi) its magnitude; and

(vii) the number of people affected.

**Comment 3.1-113 (Letter 24, Cora Edwards, February 26, 2007):** Eagle roosting or foraging in the area of the subdivision and docks will likely move to another location on the lake: this is not a mitigation measure.

**Response 3.1-113:** The sentence “[a]n eagle roosting or foraging in the area of the docks will likely move to another location on the lake” was presented in Section 3.1.2 Potential Impacts and represents the identification of a potential impact. Mitigation measures are presented in Section 3.1.3 Proposed Mitigation Measures.

**Comment 3.1-114 (Letter 24, Cora Edwards, February 26, 2007):** Swan Lake does not entirely freeze over in the winter, and the eagles remain at Swan Lake all year around.

**Response 3.1-114:** Refer to Response 3.1-9.

**Comment 3.1-115 (Letter 26, John Parker, February 26, 2007):** We have observed the red-shouldered hawk (*Buteo lineatus*), a New York State Special Concern Species, on several occasions in the vicinity of Swan Lake (March 2006- February 2007).

**Response 3.1-115:** Refer to Response 3.1-68.

**Comment 3.1-116 (Letter 26, John Parker, February 26, 2007):** The DEIS states that LW-22 will be protected with 100 foot buffer; however, should red-shouldered hawks be nesting in LW-22 or in adjacent area, 100 feet is unlikely to be adequate protection from disturbance where the forest has been fragmented by subdivision (see Crocoll 1994)

**Response 3.1-116:** Refer to Response 3.1-68.

**Comment 3.1-117 (Letter 26, John Parker, February 26, 2007):** A problem with the mitigation is that it insufficiently regulates human activity on the shores of Swan Lake. “These docks will be clearly visible from the nesting area and may present a disturbance to the Bald Eagles”, impacts that are increased because “ the perched adult and juvenile eagles are easily flushed”, resulting in physiological stress (especially in the winter) and interfere with foraging.” Kiviat Expert Comments at 3-4.

**Response 3.1-117:** Refer to Response 3.1-72.

**Comment 3.1-118 (Letter 26, John Parker, February 26, 2007):** The entire habitat of the American Bald Eagle and Swan Lake is not fully addressed as required by SEQRA, and a piecemeal approach is not adequate.

**Response 3.1-118 :** Refer to Response 3.1-18.

**Comment 3.1-119 (Letter 26, John Parker, February 26, 2007):** In May, Ms. Edwards specifically discussed with the DEC permit analyst for the AJM development at Swan Lake a photo of woodpecker habitat she had taken around portions of the proposed development (Kelly Bridge Subdivision Lots #13 and 14) on the peninsula adjacent to the lake.

Ms. Edwards, who attend the Bethel Harvest Festival last month, saw the DEC endangered species display. At that time, Ms. Edwards remarked that the display on the bog turtle looked just exactly like the one she and her husband witnessed on their property adjacent to the Swan Lake shoreline the previous week. The Edwards were particularly certain of the markings they witnessed on the turtle -- similar markings as the bog turtle display. Unfortunately they did not have a camera with them to take a photo of the turtle. As you know, the bog turtle in question has been found in areas near Swan Lake.

As you will agree, New York and DEC's commitment to protecting threatened and endangered species is a significant and important part of the agency fulfilling its mission. This mandate is part of the legacy of the Department because if these species are "taken", harmed or destroyed in situations where such damage should have been avoided, they could be extinguished forever. While the other DEC divisions work to determine what type of environmental review will be undertaken before final DEC approvals are given to the project, we ask that before such decisions are rendered that DEC investigate and determine if either the bog turtle or woodpecker witnessed by local residents on Swan Lake are in fact there, if other threatened or endangered species are on-site, and what appropriate steps must be taken to protect habitat and to ensure survival of these species. It is imperative that this information regarding the investigation be immediately and widely disseminated to all DEC Divisions that have jurisdiction over the Swan Lake project.

**Response 3.1-119:** *The habitat requirements of the bog turtle (Glyptemys muhlenbergii), a State listed endangered species and a Federally listed threatened species, are very specific and are dissimilar to any habitats at the Kelly Bridge Road site. Biologists from both the NYSDEC and TMA have been to the site and observed the habitat on the property and no habitat that would be suitable for bog turtles was found.*

*The original letter (John Parker to Stephen Joule, DEC: Endangered Species, November 1, 2005) indicated the "sighting of two possible additional threatened/endangered species on and around Swan Lake; 1) woodpecker and 2) bog turtle.*

*While the specific woodpecker species sighted is not indicated, no threatened or endangered woodpecker species occur in the northeast US, including New York State. The red-headed woodpecker (Melanerpes erythrocephalus), which typically prefers open deciduous woods and orchards with nearby clearings, is listed as special concern in New York State.*

*In addition, the proposed project site is at least 20 miles from the nearest known extant or historic bog turtle population and not within the species extant or historic range identified in the US Fish and Wildlife Service Bog Turtle Recovery Plan.*

*Extensive woodpecker habitat exists throughout the types of forests that are abundant in the surrounding area and in Sullivan County generally. Loss of potential woodpecker habitat as a result of the Proposed Action would not represent a significant impact to any of the woodpecker species that use the site.*

*The scope did not require the investigation of the site for the presence/absence of non-listed flora or fauna (see Response 3.1-56). The NYSDEC, which sets the protected status of listed species in the State and is charged with the protection of these species as determined that the Proposed Action has the potential to impact the bald eagle. Other listed species have not been identified in the area according to the State and further investigation is not required.*

## Chapter 4.0

Unavoidable Adverse Environmental  
Impacts if the Project is Implemented

**4.0 UNAVOIDABLE ADVERSE ENVIRONMENTAL IMPACTS IF THE PROJECT IS IMPLEMENTED COMMENTS AND RESPONSES**

No comments were received on this Chapter.

Chapter 5.0

Alternatives to the  
Proposed Action

## **5.0 ALTERNATIVES TO THE PROPOSED ACTION COMMENTS AND RESPONSES**

**Comment 5.0-1 (Public Hearing Transcript, February 6, 2007, John Parker):** There's been no consideration of real alternatives to their proposal. I know we've looked and seen some stuff here. I would like to flip the map as well, again, this is the site plan, that's the 21. Those who are familiar with this process will realize the map, as you see here although not the same, is similar. We'll hear some folks talk about that. And there are other proposals like this one, maximum density, and this one, cluster subdivision -- in reality, the proposal of the EIS has been to keep the 21. We are going to do the 21 we want to do and we are going to do the 21 the way we want to do it. That's the way it has been presented. I don't think there's been a full review, assessment and analysis of other potential impacts, including no-build and including adequate conservation plans in each.

***Response 5.0-1:*** *The project Scope required the following five alternatives be considered in the DEIS:*

- *No Build Alternative;*
- *Maximum Density Subdivision Alternative;*
- *Cluster Subdivision Alternative;*
- *Conventional Subdivision Alternative; and*
- *Preferred Alternative (Proposed Action).*

*Plans were developed for the Maximum Density, Cluster and Conventional Subdivision Alternatives along with the Preferred Alternative. All four development alternatives comply with the existing zoning law and, by right, could be built on the property.*

*The Proposed Action results in a significantly reduced degree of development on the property than would occur should any of the other three development alternatives be pursued. It is a reduced impact development proposal as it provides substantive conservation benefits over the other alternatives.*

**Comment 5.0-2 (Letter 15, Soterios Karras, February 17, 2007):** In fact, in accordance to Local Town Codes, and the applicant's own EAF submission, Town of Liberty actually allows this project eighty-two (82) single home dwellings, on the one hundred fourteen (114) acres.

Lines 5, reads as follows: Question: "What is the maximum potential development of the site developed as permitted by the proposed zoning?" Applicant answer: '82 single family lots."

Lines 6, reads as follows: Question: "Is the proposed action consistent with the recommended uses in adapted local land use plans" Applicants answer: (box is checked) "Yes", "The primary permitted use in the RD zone is a single family residential development on minimum 60,000 sf (1.38 acre) lots."

The applicant's DEIS never makes mention of these facts. Without it DEC would be actually awarding permits to the applicant for water demands up to, and over 33,440 gallons per day.

If that's really the case, we can look forward to the entire hillside being leveled. Imagine that - nearly thirty-five (35%) percent of the entire eagles habitat gone for houses and leachfields.

What about the wells for potable water for these homes? Now, they have “permission” to drill eighty-two (82) individual well, above all these leachfields.

***Response 5.0-2:** While in compliance with the existing zoning, and as an alternative to the Proposed Action, the Applicant has developed plans for the Maximum Density, Cluster and Conventional Subdivision Alternatives. The Applicant has no plans to pursue these alternatives unless it is the alternative chosen by the Lead Agency. The current “Preferred Alternative” site plan, which represents a reduced impact alternative, has been reviewed by the Town of Liberty Planning Board and by the NYSDEC, and is the site plan submitted for review under SEQRA.*

**Comment 5.0-3 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Project alternatives do not include any low-impact designs. Alternatives such as conservation subdivisions, and Low Impact Development practices should be evaluated in this section of the DEIS.

***Response 5.0-3:** The Proposed Action is by design a significantly lower impact alternative than the other zoning compliant developments that could be built on the project site. The proposed project area is within the Town designated RD zoning district which calls for lots to be roughly an acre and a third. This project proposes a homesite density that is less than on third of the total houses permissible on the parcel. The development incorporates Low Impact Development (LID) techniques including limiting the impervious surface on site and incorporating conservation into the Proposed Action.*

**Comment 5.0-4 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Low Impact Development (LID) is a design alternative that should be included in the DEIS. LID offers an effective way to address storm water management through site design modifications and best management practices (Low Impact Development Center; National Association of Flood and Stormwater Management Agencies). These practices include using permeable pavers instead of impermeable pavement, design modifications to reduce the size of impermeable surfaces, rain gardens, and distribution of runoff throughout the site rather than channeling it into large collection areas.

***Response 5.0-4:** As stated in the scoping document, the NYSDEC as Lead Agency has determined that the water quality of Swan Lake and surrounding surface water resources would not be included in the DEIS. At the time that the NYSDEC adopted the final scoping document for the project, it had the Applicant’s Stormwater Pollution Plan (SWPPP) before it, and determined, based on the SWPPP and numerous site visits, that the Proposed Action would not cause significant impacts to the environment from stormwater pollution.*

*Nonetheless, the project Applicant has designed a low impact development by including a layout that significantly restricts the amount of land clearing on each lot and proposes less than one third the number of homes permitted under the Town’s zoning ordinance. Leaving most of the established native vegetation between the disturbed areas will reduce the sediment yield from the project site during construction thereby limiting potential impacts to downstream water resources.*

**Comment 5.0-5 (Letter 24, Cora Edwards, February 26, 2007):** No “Conservation Subdivision Plan” is considered, and as is widely accepted in conservation literature, “wide-spaced, large lot zoning is not the answer to protecting wildlife and water quality as it fragments natural areas. (NEMO Project fact sheet #9- U-Conn Cooperative Extension and National Lands Trust). Out of

all the “alternatives” put forward in the DEIS, the only rational alternative left is the “No Build” alternative put forward which does not cause “unavoidable” negative impacts.

**Response 5.0-5:** *Comment noted.*

*State Regulations note that “[t]he basic purpose of SEQRA is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.” (6 NYCRR Part 617.1(c)).*

*Environmental Impact Statements must include “a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. The range of alternatives may also include, as appropriate, alternative: (a) sites; (b) technology; (c) scale or magnitude; (d) design; (e) timing; (f) use; and (g) types of action. For private project sponsors, any alternative for which no discretionary approvals are needed may be described. Site alternatives may be limited to parcels owned by, or under option to, a private project sponsor” (6 NYCRR Part 617.9(b)(5)(v)).*

*The lead agency's finding statement must “...certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.” (6 NYCRR Part 617.11(d)(5)).*

*SEQRA does not require the development of all possible alternatives to a Proposed Action. The lead agency, after considering input gathered during public scoping, has developed a list of viable alternatives for the Applicant to develop and compare.*

Chapter 6.0

Issues Not To Be Addressed  
in the DEIS

## **6.0 ISSUES NOT TO BE ADDRESSED IN THE DEIS COMMENTS AND RESPONSES**

**Comment 6.0-1 (Public Hearing Transcript, February 6, 2007, John Parker):** Can the DEC certify that they have taken a hard look required by Article 8 of the ECL, and can the DEC certify that the adverse environmental impacts identified as required by law have been avoided, minimized to the maximum extent and mitigated as specifically required by Code Section 617.11(d). We believe that the record, which you'll hear in a few minutes as folks come to talk, speaks for itself and that these standards cannot be said to be met based upon what's before the Department at the moment.

***Response 6.0-1:** As Lead Agency the NYSDEC is responsible for the environmental review process of this project under SEQRA. Agency staff reviewed all potential impacts during the scoping process, and concluded that none of the potential impacts, other than those pertaining to the bald eagles, would be significant, and thus none would require further study. The determination of the Lead Agency, based as it was on the EAF, review of project applications, site visits, conferences with the Applicant and the Applicant's experts, and public input, satisfied the required SEQRA 'hard look'.*

*As a result, the Swan Lake Estates Final DEIS Scoping Document focused on the one resource of concern, the bald eagle. The DEIS is compliant with the requirements of the Swan Lake Estates Final DEIS Scoping Document and assesses potential significant impacts to the eagles in appropriate detail.*

*According to the Final Scope adopted by the Lead Agency (NYSDEC), the following issues were specifically determined not to be either relevant or environmentally significant in relationship to the project and thus required no further evaluation as part of the DEIS.*

- *Impacts on Transportation;*
- *Wetlands and Vegetation;*
- *Water Quality;*
- *Land Issues;*
- *Community Character;*
- *Aesthetics;*
- *Noise;*
- *Air Quality;*
- *Community Services and Growth Inducing Impacts;*
- *Historic or Cultural Resources*
- *Impacts on Non-listed Plants and Wildlife;*
- *Critical Environmental Areas;*
- *Dam Safety;*
- *Property Values; and*
- *Effects on the Use and Conservation of Energy Resources.*

**Comment 6.0-2 (Public Hearing Transcript, February 6, 2007, John Parker):** The 617.2(n) of the DEC regulations require systematic consideration of all adverse environmental impacts here tonight in the draft statement.

**Response 6.0-2:** *Comment noted. Also see response 6.0-1. As stated in 6 NYCRR Parts 617.2 (n) and 617.9 (b) (1) the EIS is required to systematically consider all "significant" adverse environmental impacts.*

**Comment 6.0-3 (Public Hearing Transcript, February 6, 2007, John Parker):** I think it's important that we acknowledge and understand from the beginning that as-of-right means one thing from some people's perspective, but I think legally might mean something different. It means we have to overlay the laws, local, state and federal.

**Response 6.0-3:** *"As-of-right" development indicates the proposed project is consistent with the zoning regulations of the parcel of land to be developed. It means no zoning variances or special permits would be required in order to construct the project as proposed.*

**Comment 6.0-4 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** Why such a narrow DEIS and not be considered? Why are not the wetland and vegetation's and the water quality, the sewage disposal systems, air quality, noise, are these not also important to the eagles? But yet we are not discussing those tonight, because they are not on the DEIS. We are doing a very narrow, only the eagles. So we are not talking about those...

This is the mama sitting on her nest. I say again: Why is it such a limited DEIS? Do the eagles not need a good water quality? Can they survive in this? Can they sustain life in that? I don't know.

**Response 6.0-4:** *Refer to Response 6.0-1. A Full EAF (Appendix A) was completed for the project and a public scoping session was held before the Final Scope for the DEIS was developed. Several aspects of the uniform environmental review conducted under SEQRA were determined to be not relevant or not environmentally significant for this project during the previous review and through the scoping process.*

*No significant adverse impacts to water quality (See response Nos. 6.3-1 and 6.3-2) or the fisheries resource of Swan Lake are expected to result from this project. In addition, bald eagles have successfully nested in locations within the region with widely varying water conditions and available fisheries resources (e.g., the Hudson River). As opportunistic feeders that will exploit a wide range of available prey species, bald eagles at Swan Lake could be expected to adapt to changes in the fish composition of the lake, if such changes, however unlikely, were to occur.*

**Comment 6.0-5 (Letter 13, Andrew Brower, February 15, 2007):** In closing, the NYSDEC must protect the legal rights of the town of Swan Lake and it's concerned citizens who oppose the presented DEIS. DEC must "Follow the SEQR Path" as their web site states and analyze the significant adverse environmental impacts of the proposed Swan Lake Estates development, environmental impacts which are, in this case, not included in the DEIS.

**Response 6.0-5:** *Refer to Responses 6.0-1 and 6.0-4. In their role as Lead Agency under SEQRA, the NYSDEC has reviewed the available information, walked the site and surrounding areas, reviewed comments from the public on the scoping document and held a public hearing on the DEIS. This information will be used and reviewed in the development of the Findings Statement regarding this project.*

**Comment 6.0-6 (Letter 15, Soterios Karras, February 17, 2007):** Following the applicant throughout the entire SEQRA process, leading up to the applicant's DEIS, it does not disclose why the entire EAF form for the Kelly Bridge Road Estates was never completed.

*Response 6.0-6: The Full EAF for this project was completed and signed by the Planning Board Chairperson. The original is maintained on file at the Town of Liberty. A copy of the completed EAF is included in Appendix A.*

**Comment 6.0-7 (Letter 16, Michael Shanahan, February 18, 2007):** By only looking at the potential negative impacts to the eagles, (without the effect on the other aspects of their habitat, such as water quality, noise levels, loss of their main breeding nest storm water controls and overall degrading of the environment we have already experienced) the DEC is being negligent in their job. If the DEC continues to ignore these very real cumulative impacts for this project, it is sending a clear signal to all other residential subdivisions awaiting approval on Kelly Bridge Road (RNR, 95 units on 60 acres) and (Briscoe Road- 68 Units on 33 acres) that the SEQRA process does not matter and public participation is an "inconvenient delay" in the permitting process.

*Response 6.0-7: Refer to Responses 6.0-1 and 6.0-4. NYSDEC staff will review all of the information developed during the SEQRA process prior to issuing the Findings Statement for the Proposed Action.*

The Department is aware of the RNR development proposal, which is not located adjacent to Swan Lake and is approximately 2.9 miles from the nearest bald eagle nest site. The proposed project involves the discharge of approximately 28,500 gallons of treated sanitary wastewater per day to a tributary of Swan Lake, subject to effluent limits and conditions as specified in a Department-issued State Pollutant Discharge Elimination System (SPDES) permit (DEC No. 3-4836-00254/00001). Based on the distance of the RNR project from Swan Lake and the adherence to intermittent stream standards, no additional direct or indirect adverse impacts to bald eagles or water quality are expected to result from the RNR development proposal when considered together with the proposed action.

*In addition, the Department has communicated with the Town of Liberty Town Clerk and Building Department, who were unable to identify the project identified as "Briscoe Road - 68 Units on 33 acres". Further the Town indicated that it is not aware of any other current proposals before the Town for development proposals located adjacent to Swan Lake at this time, including any on the site of the former Lake Marie Road Subdivision property sold by the project sponsor. Therefore, the Department has not identified any additional projects that warrant further consideration of potential cumulative impacts on bald eagles at this time. Future projects adjacent to Swan Lake, and those that may currently be under review that are not proximate to Swan Lake, would require a separate review pursuant to SEQR. If such projects are identified it may be appropriate to consider the information presented in this EIS on bald eagles during the course of those separate SEQR reviews. Given existing information, the Department believes that the measures developed avoid, minimize, and mitigate potential cumulative impacts to bald eagles to the maximum extent practicable.*

**Comment 6.0-8: (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Soils Information necessary for habitat/vegetation evaluation, wetland and hydric soil description, erosion potential on steep slopes, and depth to water table, is missing from the DEIS.

*Response 6.0-8: These topics were reviewed in the Full EAF and it was determined by the lead agencies, both the Town of Liberty Planning Board and the NYSDEC, that there should be no significant impacts within the stated subject areas.*

**Comment 6.0-9 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** All potentially significant impacts of this project have not been evaluated in the DEIS. The Scoping Document has omitted consideration of a number of potentially significant impacts including water quality. There is no documentation provided to support the seemingly arbitrary conclusion that assessment of additional impacts is unwarranted. In fact, it is apparent that other significant impacts, normally discussed in an EIS, are likely. Therefore, all of the items listed as 'not addressed' in the scoping document should be evaluated in a supplemental EIS. These items include: wetlands and vegetation, water quality, land issues, transportation, community character, aesthetics, noise, air quality, community services and growth-inducing impacts, solid waste disposal, effects on the use and conservation of energy resources.

*Response 6.0-9: Refer to Responses 6.0-1 and 6.0-4. The NYSDEC, as Lead Agency for this SEQRA review, has considered the impacts of this project on each of several items listed as "not addressed" and the Agency has deemed them environmentally insignificant, requiring no further review beyond the scoping document.*

**Comment 6.0-10 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Impact assessment deficiencies. Part 2 of the Environmental Assessment form is not filled out. There is no indication from information contained in the DEIS of a serious review of other potential Impacts, so glibly dismissed in the Scoping Document.

*Response 6.0-10: Refer to Responses 6.0-1 and 6.0-4. The completed EAF is included with this FEIS (Appendix A). Based on the available information at the time of the SEQRA review, the Liberty Planning Board, acting as lead agency, determined that no potential significant impacts would result from the Proposed Action. After assuming the role of lead agency, the NYSDEC reviewed the Proposed Action and the existing environmental review documents and arrived at the same conclusion with the exception of those potential impacts related to the nesting bald eagles. The adopted scope for the DEIS was based on a careful and thorough review of all relevant information and issues pertaining to the Proposed Action.*

**Comment 6.0-11 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** Integrity of the existing dam, management of lake levels, and management of the invasive water-chestnut are critical to the ecology of Swan Lake and the protection of the eagles. Therefore we recommend the creation of a lake management plan that will ensure permanent maintenance and appropriate management of the lake habitats.

*Response 6.0-11: The Applicant will work closely in the future with the Swan Lake Estates Home Owners Association and any home owner with lake rights to Swan Lake to manage the lake in a way that is beneficial to both the eagles and the home owner's. However, the management of the dam and invasive species are independent of the proposed action. They are pre-existing conditions that will continue to exist regardless of whether the proposed action is undertaken.*

**Comment 6.0-12 (Letter 22, Joan Kittredge, February 25, 2007):** Some of the additional potentially adverse impacts that need to be addressed include: dam maintenance and increased recreational use of Swan Lake in terms of impacts to water quality; with the guest houses being allowed on each lot, the number of homes could potentially increase from 20 to 40 homes and significantly increase impacts such as stormwater runoff, traffic, noise, recreational use of Lake, etc. How will the cumulative effects of the all the potentially adverse impacts be mitigated and the Swan Lake ecosystem be restored to its pre-construction state, i.e., water level of Lake?

**Response 6.0-12:** *As stated prior, the Applicant has added to the deed covenants a prohibition on the construction of guest houses; none can be built. Refer to Appendix C for a copy of the updated covenants.*

*The Applicant is working with the NYSDEC Dam Safety Unit and the Town of Liberty to address issues related to the maintenance of the dam. Refer to Response 6.13-9 for additional information on the maintenance of the dam.*

*The stormwater impacts have been reviewed and have been mitigated through the inclusion of appropriate provisions within the NYSDEC approved SWPPP (Appendix E).*

*The projected traffic and the noise impacts from the Proposed Action were reviewed during the scoping process and considered to not adversely affect the surrounding area.*

*The project is not expected to affect the existing cycling of the lake water level.*

**Comment 6.0-13 (Letter 22, Joan Kittredge, February 25, 2007):** The proposed Kelly Bridge Road Subdivision is located within Sullivan County, which is part of the foothills of the Catskill Mountains and contains a complex network of streams, wetlands, ponds, lakes and rivers that become the source for much of the water flowing into the Delaware River. The importance and environmental sensitivity of the ecosystems located within the watersheds of this region must not be underestimated when reviewing the potentially adverse environmental impacts caused by proposed subdivisions such as the Kelly Bridge Road Subdivision at Swan Lake.

**Response 6.0-13:** *Comment noted. The SEQRA process conducted by both the Town of Liberty and the NYSDEC, took a hard look at how the Proposed Action would affect the environment. Both lead agencies concluded that no impact upon the environment, with the possible exception of the impact upon nesting bald eagles, would be significant. This conclusion was reached after a review of the Applicant's proposed development plans and site visits by both NYSDEC technical Staff and the permit administrator*

**Comment 6.0-14 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Relate impacts to appropriate mitigation measures. Each significant impact should also be discussed in terms of mitigation. Some impacts cannot be mitigated; this should be noted when appropriate.

**Response 6.0-14:** *While it is the intent of the SEQRA review process to assess potential significant impacts and offer mitigation to offset these impacts, the lead agency has determined that the only potential significant impacts that could result from the development of the Proposed Action are those related to the bald eagle. Mitigation has been coordinated with the proper individuals in the agencies with jurisdiction over the bald eagle and was presented in the DEIS. The updated plan presented in this FEIS provides additional measures to protect the nesting eagles at Swan Lake. All potential significant impacts have been identified and mitigated.*

**Comment 6.0-15 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Not only does this DEIS present an inadequate environmental review under SEQRA, it also falls below professional scientific review standards, and provides conclusions about environmental impact mitigation that are based on insufficient documentation.

*Response 6.0-15: Refer to Responses 6.0-1 and 6.0-4 regarding the environmental review process and Response 3.1-56 for information on the review of the environment. The mitigation presented in the DEIS and this FEIS were coordinated with the appropriate staff at NYSDEC and deemed appropriate to offset potential impacts associated with the Proposed Action.*

**Comment 6.0-16 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Mitigation cannot be effectively evaluated until all significant impacts are sufficiently identified, described, discussed and evaluated.

*Response 6.0-16: Refer to Response 6.0-15.*

**Comment 6.0-17 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** The scoping document, by specifically noting the subjects that are not to be addressed in the DEIS, falls short of allowing a 'hard look' at all of the significant impacts that this project is likely to have on Swan Lake, adjacent natural resources, and Town of Liberty. These subjects that are not addressed are commonly part of standard EIS review.

*Response 6.0-17: Refer to Responses 6.0-1, 6.0-4, 6.0-5, 6.0-8, 6.0-9 and 6.0-14. The Lead Agency, NYSDEC, as stated previously, reviewed all potential impacts during the scoping process, and concluded that none of the potential impacts, other than those pertaining to the eagles, would be significant, and thus none would require further study. The determination of the Lead Agency, based as it was on the EAF, review of project applications, site visits, conferences with the applicant and the applicant's experts, and public input, satisfied the required SEQRA 'hard look'.*

**Comment 6.0-18 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** The magnitude of issues not addressed in the DEIS requires that a supplemental EIS be prepared to correct the above described deficiencies of information, so that all significant impacts are adequately and professionally described, and effective mitigation can be evaluated.

*Response 6.0-18: Refer to Response 6.0-17. Conditions for requesting supplemental analyses, as specified in 6NYCRR Part 617.9.(a).(7).(i) of SEQRA, may arise from:*

*(a) changes proposed for the project; or*

*(b) newly discovered information; or*

*(c) a change in circumstances related to the project.*

*The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS due to any of the above conditions. None of these conditions are present here. It is noted that the only 'change in circumstances' that occurred is that the Lake Marie project no longer exists because that property was sold by the Applicant.*

**Comment 6.0-19 (Letter 24, Cora Edwards, February 26, 2007):** By having such a narrow scope and limited mitigation plan, the document creates an impression of a lower level disturbance that has already occurred and may still occur to the eagles habitat range as a result of these site plans proposed.

**Response 6.0-19:** Refer to Responses 3.1-56 and 6.0-17.

**Comment 6.0-20 (Letter 24, Cora Edwards, February 26, 2007):** 6.0 Issues not to be addressed in the DEIS: Impacts on transportation (doubling the number of homes and vehicles on Kelly Bridge), Wetlands and Vegetation, Water Quality, Land Issues, Community Character, Aesthetics, Noise, Air Quality, Community Services and Growth Inducing Impacts, Historic or Cultural Resources, Impacts on Non-Listed Plants and Wildlife, Critical Environmental Areas, Dam Safety, Property Values, And Effects on the Use and Conservation of Energy Resources. If as lead agency, the DEC will not uphold the intention of a full SEQRA review by ignoring the above, which agency will do what is required by New York State Conservation Law and the will of the people and taxpayers of Swan Lake?

**Response 6.0-20:** Refer to Response 6.0-17 and 6.0-18.

**Comment 6.0-21 (Letter 26, John Parker, February 26, 2007):** In fact, DEC made the extraordinary and perhaps unprecedented conclusion for a 'major subdivision' on a 114 acre site that had been untouched for about 150 years on the shores of one of the last remaining clean lakes in the area, that only the American Bald Eagle impacts need to be required for the scope of the DEIS. DEC provided little if any rationale for excluding these significant issues from the scope of the DEIS.

**Response 6.0-21:** Refer to Response 6.0-17. The adopted scope for the DEIS includes rationale for why the issues identified in Section 7.0 are not to be addressed.

**Comment 6.0-22 (Letter 26, John Parker, February 26, 2007):** The DEIS failed to address the potential impacts of Swan Lake Estates on the aquatic ecosystem of Swan Lake. DEIS Section 3, focuses almost entirely on the potential impacts to the Bald Eagle nesting, perching and roosting habitat. The DEIS does not clearly identify where the Bald Eagle perching and roosting locations are in relation to the subdivision proposed lots (lots 3-12). While the Bald Eagle habitat is critical, water quality and the integrity of the lake ecosystem is also crucial both in and of itself and as the system on which the eagles depend.

**Response 6.0-22:** Bald Eagle nesting and perching habitat are identified in Section 3.0 of this FEIS.

*The Project Engineer has developed a Stormwater Pollution Prevention Plan (SWPPP) in accordance with State regulations. The intent of the SWPPP is to prevent impact of aquatic resources downstream of the project. Refer to Response 5.0-4 for information pertaining to water quality impacts.*

**Comment 6.0-23 (Letter 26, John Parker, February 26, 2007):** Furthermore, there is no mention in Section 3 of septic systems and their potential impact to Swan Lake. We are particularly concerned about the impact of septic effluent on the water quality of Swan Lake.

**Response 6.0-23:** Refer to Response 6.3-1.

**Comment 6.0-24 (Letter 26, John Parker, February 26, 2007):** The plea for a thorough and proper DEIS included comments on the need to consider all the impacts on Swan Lake. It is my sincere belief that these observations about the seasons on Swan Lake illustrate an important and overarching point about the scope of the environmental review. Simply stated, it is that everything possible must be included into the proposed Draft Scope because of the interrelated and holistic nature of the environment of Swan Lake, and its impacts on the wildlife like the bald eagles that live there.

**Response 6.0-24:** Refer to Response 6.0-17.

**Comment 6.0-25 (Letter 26, John Parker, February 26, 2007):** Prior to the DEC determination is require a DEIS in this case, and during the scoping stage, the public called for a comprehensive and detailed DEIS to evaluate all impacts to Swan Lake before any decisions were made.

**Response 6.0-25:** Refer to Response 6.0-17. As required by SEQRA, the Lead Agency (NYSDEC) conducted a coordinated review of all of the information and determined those areas where the potential for significant impacts warranted further study during the development of the Scope. This was based on information provided by the Applicant multiple site visits, and a review of all comments received subsequent to the March 31, 2006 circulation of the draft scoping document to the public and to the involved and interested agencies.

**Comment 6.0-26 (Letter 26, John Parker, February 26, 2007):** The purpose of the EIS process is to facilitate “the weighing of social, economic and environmental factors early in the planning and decision-making process.” 6 NYCRR § 617.2(n). This was not done in this case. Large gaps exists in the DEIS, and to complete the process properly and in accordance with the expert commentary herein, much on-site investigation and additional analysis will be required, significant amounts. The applicant also segmented review of the entire project by dropping plans for Lake Marie Road subdivision, and then selling the parcel. Further review of the implications of failing to place conservation easements on these adjacent properties, which have known nesting sites for the bald eagles, is a change in the proposed project and its circumstances directly impacting Swan Lake.

**Response 6.0-26:** Refer to Response 6.0-17 and 6.0-25 regarding the adopted scope and the SEQRA process and Response 2.0-1 regarding segmentation of review.

## **6.1 Transportation**

**Comment 6.1-1 (Letter 10, Michael Nastro, Nastro Inc., February 8, 2007):** I would like to comment next on comments made by Cora Edwards and Mrs. Karras. Mrs. Karras displayed photos of discolored water beneath Kelly Bridge. The photos show muddy water after one of the largest rain storms in many years. There was flooding across the region and county wide damage due to this storm. I was present at the Kelly Bridge property the day of this storm. I witnessed the discolored water flowing down Kelly Bridge Road from above the entrance of the subdivision. I took approximately 100 pictures displaying the source of the ditch water. Just days before this storm, the town of Liberty did some ditch work to Kelly Bridge Road. There was a freshly disturbed ditches which made loose soil wash down the road to Kelly Bridge. These photos were shown to DEC officers who visited the site days later. Mr. Murolo was unfairly accused of discoloring the water in his own lake. Periodically, I check the roads after storms to make sure there are no trees in the road. I also check the ditches, when I see ditch water running it is clear and clean in appearance.

***Response 6.1-1: Comment Noted.***

**Comment 6.1-2 (Letter 24, Cora Edwards, February 26, 2007):** Construction vehicles for the project site used Kelly Bridge Road, Briscoe Road and Route 55 from 7:00 am to 4:30 pm every week day from May 2005 to September 2005 to carry gravel and dirt for construction. During that time, the noise, dust and degrading roads became obvious to the residents in a 5 mile radius to the site. These complaints were brought to the Town of Liberty Board on May 16, 2005. The Town of Liberty supervisor said he would ask the developer to slow down the construction vehicles and ask them to use an alternative route. Unfortunately, the vehicles continued through September 2005 until they finished the entire access road length of 5800 feet. Even the eagles did not frequent their customary perching and foraging spots in the lots 3-12 during the week, only returning on weekends when the activities had temporarily ceased.

***Response 6.1-2: Comment noted. Refer to Responses 3.1-1 and 3.1-6 regarding work windows.***

## 6.2 Wetlands and Vegetation

**Comment 6.2-1 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** I know there's a wetlands permit, a wetlands disturbance permit, and this is the part I'm referring to right here, where the stream -- the location would be on the eastern corner of the northern lake. So that would be the northernmost corner of where the subdivision is. So on June 7, 2005, when we had the opportunity to meet with the developer, we asked why is the parking lot there. And I don't really see that there's been that much of a change in the location of it. At the time there was supposed to be a stream land -- a stream crossing, a disturbance permit, and I think that's been removed as well. But I don't understand the process that went behind that, how you keep the place the same and then you don't need the permit.

**Response 6.2-1:** *The Applicant has been working closely with the NYSDEC throughout the permitting process as it relates to the Proposed Action. The NYSDEC has been provided the most recent project plans for their review and thus is fully aware of all of the proposed disturbances related to the development. As part of this effort, and as required by law, representatives from the NYSDEC have walked the site to determine the extent of the State regulated resources (wetlands and watercourses) on and adjacent to the property. As a result of the site visit, the wetland boundary was confirmed and the NYSDEC representative signed off the survey depicting these resource boundaries as they exist in the project site. Based on the identified boundaries and the impacts related to the Proposed Action, the Applicant has submitted an application for a permit to disturb 0.0046 acres of wetland and 0.1130 acres of wetland buffer. This disturbance is related solely to the construction of the driveway for Building Lot 7. As part of the Article 24 permit application, the Applicant proposes to install 11 floating docks that will be anchored to the lake bottom and/or lake shore and clear foot paths to each of the docks within the 100 foot adjacent area to the lake. No other wetland impacts would result from the development of the Proposed Action.*

**Comment 6.2-2 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** My understanding was that the plan that was submitted and approved to the town Planning Board on the 5th of May did not include any docks, it did not include any paths. And in October, when Mr. Wasson went back to the Planning board to ask for docks on a revised plan, I believe it was Mr. Schmidt at the time who said that they had in fact given their final approval and that they weren't going to be revising any more plans until after the DEIS had made a determination. So it is hard for me to understand how reducing plans that weren't there on the first plan is a mitigation, or adding docks that weren't there is a mitigation. Maybe I'm looking at a different dictionary.

**Response 6.2-2:** *The docks along the lake have been part of the project through the DEIS process. The docks are included for review by the NYSDEC as part of the project's Wetlands Permit application and have been considered during the development of the environmental mitigation plan.*

**Comment 6.2-3 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson):** Another thing that I noticed, before I read my little letter, maybe I will use a visual. There's a peninsula on our lake that is practically a hundred percent wetlands.

**Response 6.2-3:** *The NYSDEC has walked the wetlands line and approved the wetlands delineation. The wetlands survey has been signed off by a NYSDEC wetlands biologist. The NYSDEC confirmed there are wetlands present on the identified*

*peninsula. The delineated wetlands do not cover the entire area of the peninsula as indicated in the comment.*

**Comment 6.2-4 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson):**

Wetlands areas have been plowed through without permits.

***Response 6.2-4:*** *No wetlands on the site have been disturbed. The Applicant will obtain a wetland and wetland buffer Article 24 permit prior to conducting any construction activity in any regulated wetland area.*

**Comment 6.2-5 (Letter 9, Evan Beck, February 9, 2007):** Will the disturbance of long established wetlands be a detriment to Swan Lake?

***Response 6.2-5:*** *The Applicant has submitted an application for a permit to disturb 0.0046 acres of wetland and 0.1130 acres of wetland buffer related solely to the construction of the driveway for Building Lot 7. The NYSDEC is reviewing these impacts as part of the DEIS and as part of a wetland and wetland buffer Article 24 permit application. The proposed wetland and 100-foot adjacent area impacts are not expected to significantly impact Swan Lake. Agency staff will determine if the level of proposed disturbance is permissible.*

**Comment 6.2-6 (Letter 11, Denny Nathanson, February 6, 2007):** "...wetland areas have been plowed through without permits,..."

***Response 6.2-6 :*** *Refer to Response 6.2-4.*

**Comment 6.2-7 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Full description of all onsite (and adjacent) habitats including uplands, wetlands, and aquatic habitats. These should be identified and described using standard, widely recognized and accepted source such as Edinger's 'Ecological Communities of New York State'. This information is not found in the DEIS.

***Response 6.2-7:*** *The wetlands on site have been identified and verified by NYSDEC staff. The wetland boundary is accurately depicted on the Wetland Disturbance Details Drawing included with this FEIS. Refer to response 6.2-9*

*The other information requested is outside the adopted scope of the DEIS (Refer to Responses 6.0-1 and 6.0-4). In addition, the requested information would not result in changes to the mitigation proposed to offset potential significant impacts to the local bald eagles resulting from the Proposed Action. It should be noted that the intent of a DEIS is not the encyclopedic presentation of information; the focus is to be on those impacts that could be significant in nature. In this case, all aspects of the project that could potentially result in significant impacts to the bald eagle were the focus of this DEIS as all other areas of potential impacts were determined to be insignificant by two separate groups (the Town of Liberty Planning Board and the NYSDEC) while acting as Lead Agency under SEQRA.*

**Comment 6.2-8 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Impacts on species in adjacent wetlands. Because wetlands adjacent to this site are part of a large wetland and stream complex, species of conservation concern that are found in adjacent or otherwise connected

areas should also be described, as their habitat (which includes water quality) will be affected by project activities.

***Response 6.2-8:** Presentation of the noted information is outside the adopted scope of the DEIS. In addition, the Applicant does not have access to or control of the adjacent properties, therefore a study of these lands can not be done.*

*Refer to Response 5.0-4 regarding information on water quality impacts and 6.0-22 regarding the project SWPPP.*

**Comment 6.2-9 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Wetland delineation. The DEIS does not document adequate wetland delineation for this site. The only wetland maps provided in the DEIS are DEC and NWI maps - both of which are based on aerial photography and are commonly recognized as being inadequate for purposes of field information necessary for site specific review. For water quality and watershed protection purposes, all wetlands regardless of federal or state jurisdictional status must be field delineated, including wetlands along the shore of Swan Lake, and wetlands or portions of wetlands that do not fall under federal or state jurisdiction. While the DEC and COE are concerned only with wetland areas under their jurisdiction, additional wetlands, or expanded wetland areas may in fact be present on this site. For example, vernal pools typically fall outside this jurisdiction, but must be included on wetland delineation maps. This watershed approach to wetland delineation enables the town to better evaluate impacts on its water quality and supply, and habitats. It is a necessary component of environmental impact assessment.

***Response 6.2-9:** The wetlands identified on the property are associated with Swan Lake; NYSDEC Wetland LW-22. The Swan Lake portion of the wetlands on the property were delineated by TMA wetland scientists and the NYSDEC. This wetland delineation was reviewed and validated by a NYSDEC biologist, as required by NYS regulations. The wetland line and the State regulated 100 foot adjacent area are depicted on the plan titled "Wetland Disturbance Details" provided in the DEIS. A copy of the NYSDEC signed wetland map is included in Appendix F of this FEIS.*

**Comment 6.2-10 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Wetland impacts. The DEIS mentions that several small activities will occur in wetlands, but does not adequately discuss their significance as impacts. These activities include: selective clearing of vegetation, trails, driveway, floating docks, and installation of stormwater outfall.

***Response 6.2-10:** A complete set of plans with proposed final grading and the calculated acreage of disturbances within the wetland is under review by the NYSDEC as part of the Article 24 Wetlands Permit permit process. A permit from the State is required prior to performing any work that would result in disturbance to the wetland.*

*As noted previously, after visiting the site numerous times, reviewing the Proposed Action and the input received from the Involved and Interested Agencies and the public, the NYSDEC concluded that the Proposed Action would not have a significant adverse impact on the wetlands.*

**Comment 6.2-11 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Wetland and watershed functions. An assessment of wetland functions is essential for impact identification and evaluation. The DEIS should include a description of the contributing drainage area for each wetland or stream (landscape features that transmit water to wetlands, including surface drainage areas,

groundwater recharge areas, stormwater outfalls). This is part of wetland functions assessment, and is essential for evaluation of impacts on water quality and supply.

***Response 6.2-11:** Biologists from the NYSDEC have been to the site and reviewed the wetland and wetland adjacent area, and the areas of proposed disturbance. NYSDEC has reviewed the impacts and did not find it necessary to request either a wetland functional assessment or a watershed functional assessment. The watershed volumetric calculations were done as part of the SWPPP.*

**Comment 6.2-12 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Wetland buffers. The use and effectiveness of wetland and stream buffer zones for mitigating the effects of specific impacts such as water quality and habitat should be discussed in the DEIS.

a. Buffer size. The DEC wetland buffer requirement of 100 feet is a minimum standard. Is 100 feet enough to adequately protect water quality on this site? Is 200 feet sufficient for protection of lake water quality, aquatic and shore habitats? Will such buffers allow the identified threatened species (and other species of conservation concern) to survive at Swan Lake based on current and reasonably extrapolated future behavior? Buffers are mentioned in the DEIS but the rationale for their size and placement is not addressed. Established research information (e.g. studies cited in Environmental Law Institute's 2003 publication "Conservation Thresholds for Land Use Planners") should support selected buffer size criteria. According to this publication, "To provide water quality and wildlife protection, buffers of at least 100 meters [approximately 330 ft.] are recommended. "Larger buffers may be required to adequately protect habitat depending on the particular species onsite.

b. Buffer composition. In addition to buffer size, the type of vegetation, degree of slope, and soil type within the buffer are also critical components of buffers that protect water quality and habitat. Specific onsite conditions thus determine the effectiveness of buffers in the protection of water quality and habitat. None of this is addressed in the DEIS.

***Response 6.2-12:** The NYSDEC regulates a 100 foot adjacent area to all mapped wetlands, per Article 24 of Environmental Conservation Law. Activities outside of this 100 foot adjacent area are not regulated by the NYSDEC. An Article 24 permit is required for some actions as part of this proposal. While numerous studies have shown that buffers as small as 25 feet can be adequate to maintain water quality to wetlands, 100 feet is considered conservative in most cases for protection of water quality. Refer to Response 3.1-78 for details on the proposed buffers along the lake. The NYSDEC agrees that in certain cases, 100 feet is not enough to adequately protect habitat for certain species in certain locations. This is dependent on the species of concern, the geometry of the wetland and the location of the critical habitat. In the case of the Swan Lake proposal, the Applicant and the State have agreed that the buffer presented in the DEIS in combination with the other mitigation measures provided, is adequate for the preservation of bald eagle habitat with the exception for Lots 8 through 12. On these lots the Applicant and the NYSDEC have agreed to increase the buffer from 100 to 150 feet in order to provide additional visual and noise barrier to the nesting eagles.*

**Comment 6.2-13 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Indirect impacts on wetlands. The DEIS discusses only direct impacts to wetlands, i.e. filling. It fails to assess a variety of indirect and cumulative impacts, and (incorrectly) assumes that only direct impacts to wetlands may be significant. In fact it is well documented (e.g. by the Center for Watershed Protection) that indirect impacts to wetlands may be significant to the extent that they can destroy wetland habitat and completely change the composition of wetland biota -- thus incurring subsequent changes

(i.e. impairment) in wetland function. All of the following indirect impacts should be addressed in the DEIS. a. Watershed urbanization impacts (includes increase in total impervious surfaces and loss of 18 acres of forested cover within the contributing drainage area) b. Changes in hydroperiod, i.e. water supply and normal seasonal fluctuations in water level c. Changes in ponding (water depth) within wetlands d. Impacts on each of the wetland and stream functions described as per #3 above e. Increased stormwater runoff (uncontrolled, untreated) f. Decreased groundwater recharge (An increase in the area of impervious surfaces associated with land development prevents natural recharge, and so a net decrease in groundwater recharge rates is associated with urbanizing watersheds. This in turn would have a negative impact on associated plants and animals) g. Flow constrictions (construction of roads, structures, utility crossings across wetlands or upstream/downstream of them) h. Increased water level fluctuation i. Changes in water quality including sediment deposition, pollutant accumulation in wetland sediments, fate of untreated stormwater pollutant load, nutrient enrichment, road salt (see following section on Stormwater Management for details) j. Cumulative impacts on wetland functions and vegetation, and on the watershed. aquatic invertebrates, reptiles, amphibians, birds and mammals.

**Response 6.2-13:** *The NYSDEC considered the impact on wetlands carefully through the review of all project documents, meetings with experts, site visits, and review of the Involved and Interested Agencies and public input before concluding that there was no need to address impacts to the wetlands in the DEIS. As noted in the regulations, 6 NYCRR 617.8(a), "The primary goals of scoping are to focus the EIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or nonsignificant." This was the conclusion reached by DEC with regard to wetland impacts when it adopted the Final Scope.*

**Comment 6.2-14 (Letter 22, Joan Kittredge, February 25, 2007):** Coordination between DEC and other agencies, i.e. to assist in description of vegetation and wildlife of Swan Lake ecosystem. How does the DEC plan to work with agencies such as the US Fish and Wildlife Service and US Army Corps of Engineers in order to obtain accurate info and assessments concerning vegetation, wildlife, the Lake shoreline and wetlands?

**Response 6.2-14:** *The US Fish and Wildlife service is an Interested Agency and has been submitted a copy of the DEIS for review and comment. The US Army Corps of Engineers (USACE) only becomes involved in a project if the Applicant proposes to dispose of fill into or in some other way alter a wetland that falls under their jurisdiction. Since there is no proposal to place fill in or dredge wetlands under the jurisdiction of the USACE, a jurisdictional determination and permit from that agency is not required.*

*Any disturbance to the wetlands would require a Joint Application for Permit with the NYSDEC and the USACE. The Applicant has proposed a plan that will not disturb the wetlands on the property with the exception of 0.0046 acres of disturbance to the connection between Swan Lake and Wetland B on Lot No. 7. The NYSDEC is reviewing proposed impacts to the wetland resources as part of the Article 24 wetlands permit application. The USACE does not regulate buffer areas around resources under their purview and the disturbance to the wetland connection is covered under the joint application permit; only a pre-construction notification is required by the USACE for these minor impacts.*

*The vegetation and wildlife habit were observed by both staff from TMA and NYSDEC. As part of the wetland line verification process, the NYSDEC technical staff observes the vegetation in both the wetland and wetland adjacent areas. NYSDEC technical staff*

*observed and reviewed the habitat and supporting vegetation during it's site visits to ascertain the impacts from the proposed action and determined that potential impacts would not be significant. As such, further assessment of these parameters was not required in the DEIS.*

**Comment 6.2-15 (Letter 24, Cora Edwards, February 26, 2007):** The wetlands are not delineated on the map included to show what type of wetlands exist on the Kelly Bridge - Swan Lake Estates itself, only a 100 foot buffer. Until the wetlands on the shoreline and the entire parcel are delineated, it is not accurate to say the existing wetlands are 5.11 acres.

**Response 6.2-15:** *Refer to Response 6.2-9.*

**Comment 6.2-16 (Letter 24, Cora Edwards, February 26, 2007):** "The portions the State wetland on the site were delineated by NYSDEC in December 2004. No maps that show what those DEC delineation's are. According to DEC eagle monitor who came to positively identify the eagles nests in May 2005, Gene Weinstein: "the entire shoreline of Swan Lake is wetlands." If that is the case, then where are the maps that show this? The "wetlands buffer" is shown on the site plan but not the wetlands themselves. Figure 2-5 does not show any wetlands delineation on the Kelly Bridge Road site.

**Response 6.2-16:** *Refer to Response 6.2-9.*

### 6.3 Water Quality

**Comment 6.3-1 (Public Hearing Transcript, February 6, 2007, John Parker):** There really hasn't been a thorough review of the septic systems and the long-term impacts they will bring to the water quality of this lake and ultimately the habitat as it is needed by the eagles to survive.

***Response 6.3-1:** As it was not included in the scope, septic systems and water quality issues were not addressed in the DEIS. Nonetheless, the septic systems as proposed have been designed by a licensed engineer to meet the most up to date New York State and State of New York health codes. These plans have been reviewed and approved by the Town of Liberty Engineer. Operation and maintenance of the private septic systems will be the responsibility of the future homeowners in accordance with current recommendations of the NYSDEC.*

*In addition to complying with all code requirements, the Applicant has proposed a plan with a housing density half of what zoning would allow thereby further mitigating any possible impact from the septic systems.*

*Refer to Appendix G, DETAILED SITE PLANS A AND B AND SEPTIC DESIGN DATA SHEET for information on the test pit locations. Refer to Appendix I for copies of the New York State Department of Health Perc Test Data Sheets for the subject property.*

**Comment 6.3-2 (Public Hearing Transcript, February 6, 2007, Ms. Cynthia Karras):** One of the things that I would like to talk about today is what we've seen as far as the sediment problems with the lake since this development has started, the construction of this development. I just happen to have pictures that I took in September 14, 2004. This is pre-construction. We had a major flood. As you all can see, the water is the same height here, pre-construction, as it is post-construction since this development has been started. What's interesting to note -- and we can mitigate all we'd like, but what happened is that this happened and this lake looks like this, which is the same soil from up above, which is the road that they carved into the mountain. This was after they had completed by DEC the requirements for stormwater prevention measures. So even when they had done everything DEC had asked them to do, we still have this. This is a problem. This will kill the fish, it will cut off the food chain for the Bald American Eagle.

***Response 6.3-2:** The Project Engineer and the NYSDEC division of water have revised the initial SWPPP in order to further minimize the impact of the storm water flows to Swan Lake. The completed SWPPP was reviewed and Accepted by the NYSDEC. The Applicant must maintain all sediment and erosion controls cited within the SWPPP on a continuous basis. Refer to Responses 3.1-31, 3.1-69 and 6.0-12.*

*In working with the NYSDEC, the Applicant has revised the SWPPP and forwarded it to the NYSDEC under cover letters dated September 29, 2005 and January 18, 2006. Additional changes were made in August 2007 to address the relocation of the Lot 7/8 common drive as requested by NYSDEC. Specific changes associated with these dates include the following:*

*September 29, 2005*

- In the Erosion Control Plan, paragraph 12 was added on page 4 under the "Erosion and Sediment Control Practices" section. This paragraph limits site disturbance at*

any one time to a maximum of 5 acres. This includes areas associated with the house site construction.

- The hay bale silt barriers were removed from the project plans and details.
- Areas on the individual lots with disturbed slopes in excess of 1:3 will have soil matting. These areas are now shown on the Erosion Control Plan Sheets 10 and 11.
- The community access lot, No. 13, was redesigned so as not to disturb the wetlands and buffer areas. Extensive sediment and erosion control details were included in an enlargement of this lot and included on plan sheet 10. Basically, swales would be installed along both the top and bottom edges of the proposed parking lot with all runoff directed into a Water Quality Basin prior to discharge to the lake.
- In order to meet the calculated Water Quality Volume (WQv) for the site, Water Quality Basins were added to the Erosion Control Plan Sheet 11. Also, the rip rap channel cross-section was revised to increase the channel storage volumes. As a result of these additions, the proposed combined post-development WQv meets the requirement for this project site.
- The detention pond details were revised to include a forebay and aquatic bench. The buffer area requirement is met on all sides. Maintenance access is through the rip rap entrance channel and the top of the drop box. The emergency overflow is through the top of the box. The catch basins act as seepage collars on the pond outlet pipe.
- A copy of the Maintenance Schedule for the water quality features were added to the revised plan sheet 10.

January 18, 2006

- A detailed construction sequence for Lot #13 was added on Sheet 10, "Erosion Control A" Kelly Bridge Road.
- A stabilized entrance detail for each of the individual lots is shown on the "Typical Lot Erosion & Sediment Control Detail" on Sheet 10.
- The design of Water Quality Basins - Types 1 and 2 was revised to conform with Design Standards.

August 23, 2007

- The revision in August 2007 reflects changes to the "Erosion Control Plan B" (Figure 5 in the back pocket) associated with the Lot 7/8 common driveway and Lot 8 - 12 adjustments for the 150' buffer strip. Previous revisions are noted on Figures 5 and 6 (Plan sheets 10, 11, D2 and D3) which reflect responses to NYSDEC review comments.
- Also, according to the Town of Liberty Highway Superintendent, Timothy Pellam, Kelly Bridge Road has had ongoing maintenance and erosion problems both above and below the project site entrance, on both sides of the road for as long as he can remember.

**Comment 6.3-3 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** Also, the site plan must have a maintenance schedule for each type of water quality measure proposed. Once again, we're finding what is written on paper is not practiced at this site. The large retention pond, which sits approximately right here, the large retention pond for the development, which is the main retention pond has not had any maintenance as required by DEC.

**Response 6.3-3:** Site inspections will be performed weekly or within 24 hours after a 1/2" rainfall event. Any observed deficiencies in the detention basins will be investigated and addressed as necessary to assure the integrity of the basin. Full inspections of the basins, filters and outfall structures as well as removal of accumulated sediments will be performed at least once every 24 months. More frequently if necessary.

**Comment 6.3-4 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** So the water also has not been allowed to drain from this pond. My first thought about that was that there's no fence around this pond. What if a child should come along. This pond is so deep that if a child came along and fell in that water, they would drown. Yes, they could fall in the lake and drown, but legally, you're responsible for that pond. My other concern is that that pond is on this property, on parcel number one. Who is going to be responsible -- I would like to know. That's just a simple question -- for that pond? Will that pond be now the owner's responsibility of parcel number one. Or will the homeowner's association have that responsibility? And if they do have the responsibility or if parcel number one, people who are buying this, buyer should beware. Because now you're going to be responsible for that retention pond, and it is a very important retention pond.

**Response 6.3-4:** *The Applicant is required to provide maintenance of the stormwater basins during construction. Once the construction is completed and the Notice of Termination has been filed with the NYSDEC the Home Owners Association is responsible for the continued maintenance of the basins. Fencing around stormwater basins is not required. Neighbors should respect the current and future property owners' privacy and avoid trespassing on this or other privately owned parcels.*

**Comment 6.3-5 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** Now, Janet Swintusky, DEC Region 3, memorandum dated June 23, 2006, I'll quote: the soil types found on this site have historically been prone to sediment transport, and sites with these conditions require aggressive measures to prevent this from occurring. Simple question: How are you going to keep this from occurring? Already done what's required by DEC, but it still happened.

**Response 6.3-5:** *The Applicant's SWPPP has been accepted by the NYSDEC. The Applicant will continue to work with both the Project Engineer and the NYSDEC to control the stormwater quality on the project site as part of the related permit application.*

**Comment 6.3-6 (Public Hearing Transcript, February 6, 2007, Mr. Soterios Karras):** I'm a licensed wastewater operator with the Department of Environmental Conservation, and my license comes from Region 3. My job here is basically to give you some kind of an insight on how leachfields work. I think we all know about stories and horror stories about how people have leachfields, they fill up and they no longer do their job, and they have a big problem. The life-span in this area we all know of a leachfield is probably less than five years. We hear horror stories all over Sullivan County about leachfields and all of their effects. And how people have problems on lakes in the area with leachfields that were in place, that were grandfathered in from years ago.

**Response 6.3-6:** *Refer to Response 6.3-1.*

**Comment 6.3-7 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson):** These development plans include septic systems that have leachfields to be used for sewage.

Where do you think the sewage will wind up, especially without anyone checking disposal water quality and drainage.

**Response 6.3-7:** Refer to Response 6.3-1.

**Comment 6.3-8 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson and Letter 11, Ms. Denny Nathanson, February 6, 2007):** The homeowners association covenants and restrictions for the future Swan Lake Estates allows for a guest house on each parcel. The potential now is not 20 homes, but it's 40 homes. That's according to our town records. This is not addressed in the DEIS. Since the Department of Health is not involved, this will become the problem, the responsibility of the Town of Liberty building inspector. The homeowner association covenants and restrictions for the future Swan Lake Estates allows for a Guest House on each parcel. The potential for now is not 20 homes but 40 according to our town records.

**Response 6.3-8:** As part of the homeowner's association covenants and restrictions, the qualification that the construction of guest homes will not be allowed has been added. Refer to Appendix C for a copy of the updated covenants.

**Comment 6.3-9 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson and Letter 11, Denny Nathanson, February 6, 2007):** With all the many new developments that are being approved by our Planning Board, the lack of information regarding the perk tests for this development site, how are we assured that septic systems of these leachfields will be done correctly and monitored properly?

**Response 6.3-9:** Refer to Response 6.3-1.

**Comment 6.3-10 (Public Hearing Transcript, February 6, 2007, Mr. Evan Beck):** I guess the other question is: Is there going to be a waste treatment plant? When you have this amount of homes, it strikes me you need a plant. So that's a question I would ask. Is there going to be a waste treatment plant?

**Response 6.3-10:** There are no plans to construct a sewage treatment plant or connect to the Town of Liberty sewage treatment plant. The large lots provide adequate area to construct in-ground septic systems.

**Comment 6.3-11 (Public Hearing Transcript, February 6, 2007, Mr. Avram Vann):** Sam talked about the leaching fields and his concern that they may not endure. My concern is if DEC decides that the developer is entitled to develop and if Sam is correct in his concerns about five years or ten years or fifteen years from now and these leaching fields are not working and affecting the lake, what will happen? We're told we are going to have ratables and tax dollars. They shouldn't have to go to clean up a mess in the lake. The taxpayers of Sullivan County shouldn't have to pay for it. The State of New York should not have to pay for it. So it seems to me that what ought to happen is that if DEC decides to allow the developer to develop based upon his plan, there should be a surety bond in place to protect us, the citizens and taxpayers of Swan Lake, of Sullivan County, and frankly the State of New York, to make sure that if any cleanup is needed, the money to cleanup will be there.

**Response 6.3-11:** Comment noted. Refer to Response 6.3-1.

**Comment 6.3-12 (Letter 4, Michael Edwards, January 22, 2007):** The Assessment explicitly excludes consideration of the impact of septic tanks and leach fields on the American Bald Eagle habitat at Swan Lake and its water quality. Much of the research on eagle preservation states that eagles need three things to survive: a clean food supply, fresh water, and a relative lack of disturbance from human activity. In an environmental assessment therefore, it makes no sense to leave water quality out of the equation. As has been proven with similar sewage arrangements on lakes elsewhere in Sullivan County, pollution of the lake waters is likely to occur from leakage through the subsoil and shale fissures. The effects of twenty one septic tanks and leach fields on Swan Lake - the last clean-water lake of such size in the County according to many experts - would be disastrous.

**Response 6.3-12:** *Refer to Response 6.3-1. Old septic systems were inherently undersized and predated any formal design requirements.. The systems proposed for Swan Lake Estates have been designed to conform with the most up to date requirements set forth by the State including requirements for the inclusion of an expansion area. The expansion area is provided in the event the primary septic area ever fails and needs replacement, as such this area remains unused.*

*Additionally, requirements would be met for separation distances from groundwater, bedrock, and water bodies. The individual subsurface sanitary systems would allow for proper treatment of the wastewater in the septic tanks and the absorption trenches.. All proposed individual household systems would be in conformance with Chapter II of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York Part 75, Appendix 75-A, Wastewater Treatment Standards- Individual Household Systems, effective December 1, 1990.*

**Comment 6.3-13 (Letter 4, Michael Edwards, January 22, 2007):** There are more than four separate residential subdivisions currently planned for the immediate vicinity of Kelly Bridge Road and at the intersection of Briscoe and Kelly Bridge Road, totaling over 200 new homes. Unfortunately, the combined impacts of these subdivisions on the eagle habitat, with plans to divert effluent and storm water run-off into the stream (B(T) classification) that feeds into Swan Lake and into Swan Lake itself, have not been taken into account.

**Response 6.3-13:** *The NYSDEC has reviewed and accepted the Swan Lake Estates SWPPP. The SWPPP considers impacts to the receiving waters from the stormwater runoff resulting from development of the project site. At each of the other developments cited, their project SWPPPs' will be reviewed by the NYSDEC and revised as needed prior to permit approval by the State to ensure that the water quality of all downstream aquatic resources remain unaffected by the Proposed Action.*

**Comment 6.3-14 (Letter 9, Evan Beck, February 9, 2007):** After a period of heavy rain this summer, the lake turned a murky brown and stayed that way for over a week. In the 40 years we have had the house we have seen many floods, but have never seen the lake turn muddy and brown. I believe this must have been due to the excavation and road development for this project.

**Response 6.3-14:** *Refer to Response 6.3-5.*

**Comment 6.3-15 (Letter 9, Evan Beck, February 9, 2007):** Will the lack of sewage treatment plant or sewer system for the development cause contaminants to ultimately drain into and pollute the lake?

*Response 6.3-15: Refer to Response 6.3-1.*

**Comment 6.3-16 (Letter 10, Michael Nastro, Nastro Inc., February 8, 2007):** Mr. Karras spoke about the use of septic systems. He claims that a septic system has the life of only 5 years. This as you know is absolutely untrue. Mr. Karras claims to be some kind of expert in waste water treatment. I don't believe he has a degree in engineering in this field, as it was very apparent by his presentation. In addition, to Mr. Karras comments on public sewars on his side of the lake, the reason for public sewars has to do with density. The houses are on extremely small lots and are right next to each other. There is no room for septic systems. Mr. Karras would like to make people believe that public sewars are needed on large lots, but that is not true. A properly designed system can last many decades.

*Response 6.3-16: Comment Noted.*

**Comment 6.3-17 (Letter 11, Denny Nathanson, February 6, 2007):** Yearly weeds that use to float to shore come August have disappeared. Now the plant growth actually reaches the surface of the water, clouding the lake and giving it a smell.

*Response 6.3-17: Refer to Response 3.1-69.*

**Comment 6.3-18 (Letter 11, Denny Nathanson, February 6, 2007):** Swan Lake has been muddied from improper construction.

*Response 6.3-18: See Response 6.3-5.*

**Comment 6.3-19 (Letter 11, Denny Nathanson, February 6, 2007 and Letter 12, Chris Karras, February 13, 2007):** These development plans include septic systems that have leach fields to be used for sewage. Where do you think this sewage will wind up especially without anyone checking disposal water quality and drainage? Since the Department of Health is not involved and ultimately this will become the responsibility of the Town of Liberty Building Inspector. What I mean by this is after they build them they will provide the home owners with leach fields for the homeowners waste. This will ruin the lakes vitality in the future to come. You can see first hand when you look at lakes in and around Sullivan County. Such as Swan Lake.

*Response 6.3-19: See Response 6.3-1.*

**Comment 6.3-20 (Letter 12, Chris Karras, February 13, 2007):** The old-timers were smart in their day when they constructed on our side of the lake. They put in sewer systems in order to prevent the destruction of this great and wonderfully diverse animal population.

*Response 6.3-20: Unlike the smaller lots on the opposite side of the lake, with the exception of the 2.38 acre common lot, the proposed lots range in size from 3.0 acres to 8.37 acres, and 16 of the 20 lots are larger than 5.0 acres each.. This allows more area to install modern septic systems. These systems must meet current State Health Code and standards. Oversight for the proper installation and construction in accordance with the approved plans will be the responsibility of the Town of Liberty's Code enforcement*

*office or the Town's Engineer prior to issuance of Certificates of Occupancy. See Response 6.3-1.*

**Comment 6.3-21 (Letter 13, Andrew Brower, February 15, 2007):** The adverse impacts created by approval of the DEIS and Article 24 Permit application approval are significantly greater. These include the potentially immense adverse environmental impact resulting from the proposed installation of septic systems and associated leach fields for wastewater treatment for each of the planned residential units. The leach fields, to be located upslope in this case, are proposed to be located only approximately 100 feet from the shoreline of Swan Lake. If they fail, and leach fields have historically been prone to failure in lake communities such as ours, then not only would the eagles be devastated, but the lake itself (the water quality, the diverse animal population, the beautiful quality of life that we all experience from the unspoiled nature of Swan Lake, the tourism boost to the local economy), as well the lands bordering both sides of the lake will be devastated. Indeed, this is why town sewerage lines were extended to the opposite side of the lake and why in 1982, Presidential Estates, as well as all proposed construction, were required to be served by town sewerage lines for piping to sewage treatment plants. The devastation to the environment that would be caused by failure of the septic systems would be monumental, including contamination of individual well water where applicable in the entire area, including the proposed new subdivision.

**Response 6.3-21:** *Refer to Responses 6.3-1, 6.3-12 and 6.3-20.*

**Comment 6.3-22 (Letter 13, Andrew Brower, February 15, 2007):** Another potential environmental impact created by this development would be pollution and contamination of lake water during construction and afterward by soil erosion and subsequent sediment influx by discharge of turbid water into the lake leading to muddying of the water and sediment filling Swan Lake. This was evident in the recent heavy flooding that we experienced here which, even though prefaced by heavy rainfall, was due in large part to increased soil erosion resultant from land clearing brought about by proposed construction to the Swan Lake Estates Subdivision.

**Response 6.3-22:** *Refer to response 6.3-5.*

**Comment 6.3-23 (Letter 13, Andrew Brower, February 15, 2007):** Additional significant and unacceptable pollution and contamination of Swan Lake waters will occur as a result of the increase automobile traffic to and from the subdivision, specifically by automotive fluids, including ethylene glycol antifreeze, which is highly toxic to both marine life and land and air based ecology (including the Bald Eagle, swans, fish, and numerous other examples). This is not to mention increased general refuse and litter increases.

**Response 6.3-23:** *It is acknowledged that pollutants other than those specifically mentioned in the DEIS accumulate on impervious surfaces. The NYSDEC Stormwater Management Design Manual references that the reduction in these types of pollutant loads occurs by the operation of NYSDEC approved stormwater practices, practices that are incorporated into this project's SWPPP. Given the low developmental density proposed for this project, the related pollutant loading to the Lake will not cause a significant impact to the water quality of Swan Lake.*

**Comment 6.3-24 (Letter 13, Andrew Brower, February 15, 2007):** On the topic of water quality, how were the applicants allowed to revise their mitigation plan after it was submitted to and approved by the town planning board to include docks? Do they think that they can slip this

by everyone? The DEC wetland fringe buffer area not only would be fringed upon, but would be eliminated by these “surprise” docks and in the areas where pathways down to these docks would be cleared (not to mention the proposed pathways down to the lake for the individual lots). The maximum dock size quoted was 200 square feet, with several other smaller docks to also be constructed. This would have a severe impact on the water quality of the lake not only by gasoline boat engine leaks and emissions but increased refuse and litter concerns as well as potential increased soil erosion issues.

**Response 6.3-24:** *See Response 6.2-2. Impacts related to the installation of the proposed docks and clearing of the proposed pathways have been considered in the development of the mitigation proposed in the DEIS and this FEIS. These impacts would not result in the elimination of the existing wetlands. The Applicant has submitted an Article 24 permit application for the impacts the would result from the development of the site.*

*The Applicant will ban the use of all gasoline powered boats on the lake. Use of the proposed docks would be restricted to the individual property owner of Swan Lake Estates and their guests. It is anticipated that these individuals, similar to those people who own property on or near the lake, would have a vested interest in keeping this resource clean and free from litter.*

**Comment 6.3-25 (Letter 14, Cynthia Karras, February 17, 2007):** He had no Storm water prevention practices in place, which resulted in Swan Lake being polluted. Fines were imposed.

**Response 6.3-25:** *When the project site was initially inspected by NYSDEC officers and stormwater specialists, there was over 7,000 linear feet of silt fence installed downgradient of the road disturbance. In addition, the finished road subgrade had been rolled and shaped. Check dams were installed in the boulevard median swale.*

*The Applicant filed for a stormwater SPDES permit in February, 2005. It was never received by DEC and therefore, the contractor was working without a permit. The NYSDEC cited the contractor and penalties were imposed. The penalties were later reduced and the charges either reduced or dropped. The contractor paid a \$1,000 fine with no finding of guilt and no plea.*

**Comment 6.3-26 (Letter 14, Cynthia Karras, February 17, 2007):** The Town of Swan Lake Sewage Treatment Plant cannot accommodate any new hook ups to the current system. They are currently almost running at capacity. The only alternative was Subsurface Sewage Treatment (leach fields). These are not environmentally friendly in any capacity. They are known to fail within five years time.

**Response 6.3-26:** *Refer to Responses 6.3-1, 6.3-12 and 6.3-20.*

**Comment 6.3-27 (Letter 14, Cynthia Karras, February 17, 2007):** Mr. Murolo has been made aware as has the DEC that the invasive water chestnut weed is alive and well, spreading dramatically over the last two years at Swan Lake. This invasive weed was introduced into this lake environment. If Mr. Murolo owns the lake then he is responsible to maintain this lake. This weed left to its own devise will continue to thrive and eventually suffocate and kill this lake. He has done nothing about critical environmental issues.

**Response 6.3-27:** *Refer to Response 3.1-69.*

**Comment 6.3-28 (Letter 14, Cynthia Karras, February 17, 2007):** My biggest concern has always been what subsurface sewage system's (leach fields) will do to the American Bald Eagles habitat that is the entire lake.

**Response 6.3-28:** Refer to Responses 6.3-1, 6.3-12 and 6.3-20.

**Comment 6.3-29 (Letter 15, Soterios Karras, February 17, 2007):** The possibility of two homes per lot renders the subsurface water systems likely to fail, and the proposal has evaded state review.

\* The applicant claims that twenty (20) of the twenty-one (21) parcels proposed would be served by subsurface wastewater systems.

\* The applicant never disclosed to DEC officials the fact that the Town of Liberty Code allows for one un-specified sized "guest house" on each of the twenty parcels, *in addition to those proposed on the site plan*. This results in forty (40) possible homes, bringing the water demand back to the 16,720 gallons per day, or more...depending on the size of the guest house.

**Response 6.3-29:** Refer to Response 6.3-8.

**Comment 6.3-30 (Letter 15, Soterios Karras, February 17, 2007):** The location of the subsurface wastewater systems (leach fields) are on the submitted maps approximately two hundred (200) feet away from the "present day waters edge" of Swan Lake. The natural downward landscape slopes towards the lake leading directly to the outlined one hundred (100) foot "NYSDEC Designated Fresh Water Wetlands Buffer Zone". The applicant's own subsurface wastewater systems figures lead me to conclude that failure of these systems is imminent for the leach fields. Regardless of the poor soil conditions, percolation test results were never disclosed, not currently on file in the town Planning Board records, nor were any other means made available to the public by the applicant to justify resorting to these subsurface wastewater systems. Everybody living around Swan Lake uses municipal sewer lines to address crucial issues, because of the known damage leach fields cause to Swan Lake prior to 1982. The failure of those earlier systems caused much harm to this man made lake. Given this known experience and on-site characteristics, the applicant must be made to conform to the same set of public health, safety and environmental responsibility requirements that the rest of the community around Swan Lake adheres to protect the eagle habitat. Based on the DEIS alternatives proposed, this leads to the "no build option" as the only way to avoid environmental catastrophe a few years down the road. From a civic engineering point of view, and as a certified expert on these matters, this issues cannot be swept aside and not analyzed by the DEIS for any reason - economic, or otherwise.

*Response 6.3-30: Percolation test data and soil profiles are presented on the Septic Design Data Sheet which is included in the plan set provided to the Town as part of the initial environmental review documentation. A copy of this sheet is included herein as Appendix G.*

*The test pit and percolation test locations were previously shown on Plan Sheets 7 and 8 which are contained in Appendix G herein.*

*While municipal sewers were installed in the 1980s to serve the preexisting homes on the south side of the lake, all existing homes along Kelley Bridge Road and Shore Road continue to be served by individual subsurface septic disposal systems. Many of these systems are less than 100 feet from the shoreline, much closer than those designed for the Proposed Action.*

*Refer to Responses 6.3-1, 6.3-12 and 6.3-20 for additional information on septic systems.*

**Comment 6.3-31 (Letter 15, Soterios Karras, February 17, 2007):** Subsurface wastewater systems (leach Fields) are "incapable" of removing the harmful by-products that raw sewage produces, such as, nitrogen, phosphorus, and ammonia. These are just some of the many examples of the very harmful chemicals that can destroy potential "habitable environments" especially the small and shallow lake that the Bald Eagles living here rely upon to survive. There is no discussion in the DEIS of the ramifications of the failure of these systems.

***Response 6.3-31:*** *Subsurface septic disposal systems don't receive raw sewage. They receive septic tank effluent which has undergone primary treatment by virtue of solids removal in the septic tank. The septic tank promotes anaerobic bacterial growth to allow decomposition of the sewage held within the tank.*

*In accordance with NYS Department of Health Design Standards: "All effluent from septic tanks shall be discharged to a subsurface treatment system. Subsurface treatment systems are designed to filter and oxidize most dissolved and suspended solids in the septic tank effluent. Absorption fields will also remove most of the phosphorous in septic tank effluent. If the absorption trenches are kept shallow as recommended, vegetative cover root systems will take up most of the phosphates and nitrogen. Hence, the possibility of phosphates and nitrates moving any significant distance through the soil to the ground water table can be greatly reduced."*

*In accordance with NYSDEC Design Standards: "In general, subsurface disposal should be the choice for smaller systems (30,000 gpd or less) while surface discharge is more appropriate for larger systems."*

*In accordance with US Environmental Protection Agency Design Standards: "Where site conditions are suitable, subsurface soil absorption is usually the best method of wastewater disposal for single dwellings because of its simplicity, stability and low cost. Under the proper conditions, the soil is an excellent treatment medium and requires little wastewater pretreatment".*

*The referenced sources include: "Design Standards for Wastewater Treatment Works - Immediate Sized Sewerage Facilities, 1988" published by NYSDEC and*

*"Design Manual - On-site Wastewater Treatment and Disposal Systems" US Environmental Protection Agency, Office of Water Program Operations, Office of Research and Development Municipal Environmental Research Laboratory, October, 1980.*

**Comment 6.3-32 (Letter 15, Soterios Karras, February 17, 2007):** I personally have town sewer service for my home, but I don't have town water service on the lake. My neighbors across the street have access to town water. My concern is who's next on the list - will it be the

applicant's proposed project across the lake, or the residents who already live here in harmony with present day environment, and the endangered species that thrive? As a duly licensed NYSDEC Grade 2A Wastewater Operator, I can say that the DEIS failure to address the crucial septic and water impact issues renders the document a useless tool to analyze and evaluate the negative environmental impacts of this proposal. We know this because Swan Lake has already suffered these significant environmental insults. The lake and the Bald Eagles must not be subjected to this again- more will die, and/or leave or both- and the nutrient loading that will result from these septic systems failure will kill our beautiful Swan Lake. SEQRA is supposed to be a 'hard look'- but this DEIS fails and DEC must require it be redone consistent with these comments including a full analysis of these impacts.

**Response 6.3-32:** *Prior to the recommendation by the USFWS that the bald eagle be removed from protection under the Endangered Species Act it was listed as "Threatened" not "Endangered" (Refer to Response 3.1-1). Regarding septic systems and water quality, Refer to Responses and 6.3.-1, 6.3-12 and 6.3-20. The proposed homes would be served by private wells. The Applicant has no control over who will be connected to the Town's municipal water system.*

**Comment 6.3-33 (Letter 16, Michael Shanahan, February 18, 2007):** Since the AJM project began, I have seen deterioration in the quality of the lake, with the lowering of lake water levels, red clay mud- colored water, soil erosion at the project entrance and a change in the behavior of the wildlife on the northern lake shore.

**Response 6.3-33:** *Comment noted. The Applicant is working with both the Dam Safety Unit and Division of Water of the NYSDEC. The Applicant will continue to work with the Division of Water until the completion of the project and the Notice of Termination for the construction SPDES permit is issued. As the management of the dam is independent of the proposed action and a preexisting condition that will continue to exist regardless of whether the proposed action is undertaken the Applicant will continue to work with the Dam Safety Unit until all issue related to the dam have been addressed.*

**Comment 6.3-34 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Wetlands and water quality issues are inadequately described, discussed and evaluated in the DEIS. A significant component of the eagles' habitat is the lake and surrounding wetlands, with high water quality necessary to maintain these viable ecosystems. Existing condition of these habitat features (including water quality), and subsequent potential impacts to them are not discussed in the DEIS.

**Response 6.3-34:** *The adopted project scope does not require a detailed evaluation of the existing wetlands or water quality, because during the scoping sessions the project was deemed not to present any- significant impact on either. During the DEIS Scoping process these items were determined not to be significantly impacted by the project. This conclusion was reached by the Lead Agency after reviewing all pertinent documents, meeting with experts, numerous site visits, and getting input from Involved and Interested Agencies and the public.*

*Refer to Responses 3.1-31 and 3.1-69 for information on the project SWPPP.*

**Comment 6.3-35 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Water use and wells. Impacts on wetland hydroperiod, lake levels, streamflow and groundwater during drought years or other periods of low water are not addressed; this needs to be added to the DEIS.

**Response 6.3-35:** *The proposed project will use approximately 5.8 gallons of groundwater per minute (8,360 gpd). This amount of water usage over a 114 acre parcel is not considered to cause a significant impact to the water table, the lake level, or the level of the adjacent stream. In addition, and probably more importantly, the depth of water supply wells generally means they draw water from an groundwater aquifer not hydrologically connected to the surface water system of which Swan Lake and the surrounding wetlands and watercourses would be part. As such, impacts to the surface water levels resulting from water usage at the proposed Swan Lake Estates would not be expected.*

*Depths of wells at Camp Toldas Yakov Yosef located approximately 800 to 2,000 feet north of the AJM site along Kelly Bridge Road. Well depths and yields for the five wells on site are as follows:*

- #1. 160 feet deep, 11 gpm yield*
- #2. 420 feet deep, 50 gpm yield*
- #3. 70 feet deep, 15 gpm yield*
- #4. 380 feet deep, 16 gpm yield*
- #5. 350 feet deep, 13 gpm yield.*

*It is anticipated that well depths on the Swan Lake parcel would fall within this range.*

*Consumptive household water use is generally a very small portion of the water pumped from a private well. Unlike homes connected to municipal wastewater systems which convey water used in the household out of the area and away from the local ground water systems, the vast majority (greater than 90%) of the water that would be drawn from the groundwater aquifer to supply the proposed homes would be returned (recharged) to the aquifer via individual septic systems. Water consumed and not recharged would be limited to a few circumstances including water carried offsite and then released or water lost through steam generated during showers or boiling. This may be offset through the collection of water through the use of dehumidifiers and air conditioners which both condense airborne water and discharge it to the septic or the ground.*

*As a result we can conclude that neither groundwater nor surface water systems, including hydroperiod and other surface water resources, would be significantly impacted as a result of the water supply and wastewater systems proposed as part of this project.*

**Comment 6.3-36 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** *Septic. Evaluation of soil and topographic site conditions regarding placement of septic, and discussion of impacts (including cumulative impacts) of a significant number of new septic in close vicinity to Swan Lake and adjacent wetlands are not discussed; nor are discussions included regarding the long term requirements for these systems and impacts on the long term water quality of the lake. These should be addressed in the DEIS.*

**Response 6.3-36:** *Refer to Responses 6.3-1, 6.3-12 and 6.3-20. The septic systems, soil percolation tests, and soil classifications were reviewed by the Town of Liberty engineer. The Town of Liberty Code Enforcement Officer will inspect the installation of each system, and the Applicant's Engineer of record will have to validate that the systems have been built according to the approved plan specifications.*

**Comment 6.3-37 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Because stormwater management activities may have a significant effect on water resources, including wetlands and streams, compliance with the new DEC Phase II Stormwater Management regulations also will affect, and be affected by, the vegetation and soil characteristics of certain habitats, particularly wetlands, ponds, lakes and streams. The SWPPP and a description of its impacts on wetlands and the lake is missing from the DEIS. These impacts include changes to hydroperiod and seasonal (including drought) availability of water in wetlands and streams, introduction of invasive species, buffer disturbance, and pollutant loading impacts on receiving waters (wetlands and lake) as stormwater is concentrated into smaller areas. All of these potential impacts need to be assessed in the DEIS, and effective mitigation for them must be developed.

**Response 6.3-37:** *The Proposed Action does not site stormwater management facilities in the wetland or wetland adjacent area (buffer), therefore no impacts to these resources from construction of the stormwater management features would result and the introduction of invasive species is not anticipated. The location of the project site in relation to local watercourses precludes changes to the volume of water reaching them. The wetlands down gradient of the project site are all associated with Swan Lake. The water that currently runs off the site and that which will be discharged from the stormwater basins would all drain to Swan Lake. The difference between pre- and post-conditions when compared with the volume of water in the lake would have negligible impact on the lake water level and therefore negligible impact on the associated wetlands surrounding the lake. Refer to Response 6.3-39 regarding pollutant loading.*

*The SWPPP has been reviewed and accepted by the NYSDEC. The SWPPP was developed according to that agency's "New York Standards and Specifications for Erosion and Sediment Control" manual and it's "Stormwater Management Design Guidelines" document.*

**Comment 6.3-38 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Pollutant loading. The construction of stormwater management facilities does not necessarily ensure an adequate treatment of the pollutant load in stormwater runoff. This is particularly relevant to Swan Lake, a shallow, clean lake under increasing development pressure from this and other development that will contribute to overall water quality degradation. Even if the DEC Stormwater Management Design Guidelines are followed scrupulously, stormwater management ponds and other facilities can only remove a certain percentage of pollutants- and this is only if they are designed properly, built as designed, maintained regularly, and are operating at maximum efficiency.

a. For effective impact assessment, it is essential that the pollutant load for both pre- and post-development for the following pollutants (page 2-3 of the DEC Stormwater Management Design Manual) are calculated and presented for review in the DEIS : BOD, COD, TSS, TDS, total phosphorus, total nitrogen (including Nitrates/nitrites), lead, copper, zinc and cadmium. The Simple Method (Scheuler, T. 1987, *Controlling Urban Runoff A Practical Manual for Planning and Designing Urban BMPs*. Metropolitan Washington Council of governments, Washington, D.C.), or a comparable professionally accepted method, may be used for this purpose; but the same method must be used for all calculations. This will provide information regarding the extent of water quality impacts expected to result from the proposed development. Oil and grease and chlorides (ie road salt) are other common constituents of stormwater runoff that should also be considered during impact assessment. This level of impact assessment is especially appropriate where significant impacts to habitat (including wetlands and lakes) for protected species may occur.

b. The DEIS does not discuss road salt and its impacts/mitigation. Road salt cannot be removed from stormwater by standard stormwater management practices. Impacts from snowpack (ie plowed snow) should be included in the SWPPP and DEIS. Where will this snow be deposited after it is plowed? Where will it melt, thus releasing its load of pollutants? The proximity of roads and parking areas to significant wetlands incurs a significant impact from road salt during the winter months. Road salt concentrations can significantly alter vegetation patterns and thus habitat in wetlands and water bodies. This is a water quality issue that should be discussed fully in the DEIS.

c. Pollutant loading at this site will be directed into wetlands, and Swan Lake, thus contributing to the cumulative effect of regional pollutant loading, this is not addressed in the DEIS. The wetlands on this site are all part of a larger watershed. Potential serious water quality degradation throughout the larger watershed system is a very real threat. It may even extend to groundwater and wells.

d. Pesticides, herbicides and fertilizers are among the common constituents of stormwater runoff that must be considered in the DEIS. The project includes a gain of approximately 21 acres of lawn to replace existing vegetation. Pesticides and herbicides will be present in stormwater runoff, and will be likely to impact wetlands. This impact needs to be addressed, and mitigation evaluated.

**Response 6.3-38:** *Neither an analysis of changes in pre- and post-construction pollutant loading, nor an assessment of the potential impacts associated with the specific pollutants noted in the comment (road deicing salt, oil and grease, pesticides, fertilizers, or herbicides), were required by the Swan Lake Estates Final DEIS Scoping Document.*

*The Swan Lake Estates SWPPP, which has been approved by the NYSDEC, was prepared in accordance with, and satisfies the requirements of the State's General Permit for Stormwater Discharges from Construction Activities (GP-02-01) and the NYSDEC Stormwater Management Design Manual (2003). The NYSDEC does not require the calculation of pre- and post-construction pollutant loading rates for a project to gain the required coverage under the application terms for obtaining a GP-02-01 stormwater discharge permit under the NY State Pollutant Discharge Elimination System (SPDES) program. Instead, according to the NYSDEC Stormwater Management Design Manual, compliance with New York State "pollutant removal goals" are presumed by the NYSDEC to be met when treatment of the calculated Water Quality Volume, "is provided - as is done with the stormwater management facilities proposed in the Swan Lake Estates SWPPP. By meeting the State's pollutant removal goals, the Applicant has demonstrated that the project does not present a potential for significant adverse impacts on wetlands or water quality in Swan Lake.*

*The Applicant is unaware of any data indicating that "potential serious water quality degradation throughout the larger watershed system" is a very real threat as noted by the commentator. The Applicant further notes that such a threat is beyond his control.*

**Comment 6.3-39 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Erosion and sediment control issues. Serious negative impacts on the water quality of Swan Lake from soil erosion resulting from recent road construction on the project site have been documented. Neither these nor future potential impacts have been addressed in the DEIS.

**Response 6.3-39:** *The project's SWPPP, as required by the State permitting regulations, contains comprehensive pre- and post-storm water calculations that appropriately address potential impacts from storm water runoff from the construction area including*

*the installation of the road. This document has been reviewed and accepted by the appropriate staff at NYSDEC.*

**Comment 6.3-40 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Increased impervious surfaces. This project will result in covering approximately 12 acres of the project site with impervious surfaces. This dramatically increases the volume of stormwater runoff, and the amount of pollution it contains. Disruption of drainage patterns and seasonal water levels, also associated with large areas of impervious surface, can lead to wetland loss and increased flooding problems - both onsite and offsite. The DEIS needs to address these impacts directly, instead of assuming that it will all be taken care of by the project's Stormwater Pollution Prevention Plan (SWPPP)- which is not even included in the DEIS.

**Response 6.3-40:** *The proposed impervious surfaces on the site have been limited to 6.5 acres, or 5.4 percent of the site, not the 12 acres stated in the comment.*

*The NYSDEC, acting as the lead agency, has reviewed the impacts from the proposed project and determined that the SWPPP provides appropriate regulatory protection of water quality in the receiving wetlands and water bodies.*

**Comment 6.3-41 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Stormwater management and impact mitigation. According to DEC's *Stormwater Design Manual* its purpose is "to provide standards for the design of the Stormwater Management Practices (SMPs) to protect the waters of the State of New York from the adverse impacts of urban stormwater runoff." The purpose for including mitigation practices in a DEIS under SEQRA is to "alleviate, avoid, or minimize the adverse impacts of a proposed action" (SEQRA Handbook). This is accomplished first by alterations in the project plan itself so that adverse impacts are minimized *before* stormwater management practices are applied and a SWPPP is prepared. Thus a SWPPP is not a substitute for other forms of impact mitigation. The DEIS should discuss this relationship between the SWPPP and mitigation.

**Response 6.3-41:** *The commentator appears to be asking for a generic review of SEQRA procedures, a topic not appropriately addressed within an EIS document.*

**Comment 6.3-42 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Who will be responsible for the maintenance of stormwater facilities? This should be provided through establishment of a bond; other management plans or entities such as Homeowner's Associations have proven to be much less effective in implementing adequate maintenance over time. This issue is not mentioned in the DEIS, yet it is critical for future water quality protection.

**Response 6.3-42:** *The foregoing approval is conditioned upon twice yearly certifications by a licensed professional engineer that the storm water management systems including the road crossing culverts, detention basins, outlet structures and treatment components are maintained unencumbered, operational and functioning as designed. The engineer shall also deliver a written report containing the engineer's observations and/or maintenance recommendations to the home owners association of Swan Lake Estates with a simultaneous copy to the Town of Liberty Building Department. The first certification and report shall be delivered on or before July 1, 2009 and biannually thereafter. No more than 60 days after receipt of the report, the homeowners association shall implement any recommendations contained with the engineer's report.*

**Comment 6.3-43 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Fate of pollutant-laden sediments. Detention pond sediments trap a percentage of stormwater

pollutants over time. As part of normal maintenance, this sediment must be removed periodically. How will this be done to ensure that nearby wetlands are not impacted, and where will the pollutant-laden sediment be deposited?

**Response 6.3-43:** *During the construction of the project, the sediment will be stored and air dried near the entrance of the site at a distance of over 1400 feet from the lake. While drying, sediment stockpiles will be protected from erosion and isolated behind a silt fence barrier. Once the soil is dried it will be used for yard fill at the home sites. These sediments are not expected to be "pollutant laden", because their source is the existing soil which has been undisturbed for many years as evidenced by the presence of forested habitat and lack of human development.*

*Post-construction maintenance of the stormwater basins requires the removal of accumulated sediment from the forebay once it reaches 50% of the available capacity in accordance with the legally binding maintenance agreement as set forth in the maintenance requirements for Stormwater Ponds as stated in the NYS Stormwater Management Design Manual, latest edition. This material will be removed from the site and disposed of appropriately at an approved solid waste facility.*

**Comment 6.3-44 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Mitigation of water quality impacts. Several options for mitigating water quality impacts are available, but are not discussed in the DEIS - in part because the DEIS omits discussion of water quality impacts. Beyond designing and building stormwater management facilities as optimally as possible, the only way to further reduce pollutant loads is to reduce the area of impervious surfaces over which stormwater passes before it reaches a detention basin or other stormwater management facility. Generally, damage to water resources from development is directly proportional to the amount of impervious surface on the developed site. This needs to be discussed in the DEIS, and mitigation for potentially significant impacts to water quality and supply needs to be developed and evaluated in the DEIS.

**Response 6.3-44:** *An assessment of impacts on water quality was not required by the Final Scoping Document for the Swan Lake Estates DEIS. However, potential impacts on surface water quality have been addressed by the measures proposed in the NYSDEC accepted SWPPP.*

*In addition to the SWPPP, the proposed action includes the following measures that would mitigate potential adverse impacts on water quality:*

1) *Woodland Preservation: The existing woodland on the project site provides an important water quality function by removing pollutants from stormwater. Through selective, and limited, clearing of the existing woodland during road construction and development of the proposed lots and the preservation of a wooded buffer along the shoreline, the existing hydrologic system will be in large part preserved, thereby reducing post-construction increases in pollutant loads in stormwater. As noted in the DEIS, only 11.00 acres of the nearly 80 acres of woodland on the 114 acre site would be removed;*

2) *Impervious Surface Reductions: Because impervious cover and altered hydrology are so closely linked, proposed impervious surfaces on the site have been limited to 6.5 acres, or 5.4 percent of the site;*

3) *Control of Pollutant Sources: In many landscapes, more fertilizers and pesticides are applied to residential lawns and golf courses than to agricultural fields.*

*Lawns frequently cover the largest surface area in urban watersheds and can be the greatest source of phosphorus in runoff (Waschbusch, Selbig, and Bannerman 1999). Accordingly, fertilizer applications on the Swan Lake Estates parcels will be limited to control this potential pollution source. The Swan Lake Estates Home Owners Association will encourage landowners to adopt gardening practices and landscape designs that use fewer pollutants and produce less runoff by explaining the relationship between lawn fertilization and water quality impairment, and describing better lawn care practices to reduce any additional sources of nutrient pollutants into Swan Lake. These practices include recycling lawn clippings, testing soil prior to fertilization so as to fertilize only when necessary and with the application of only the necessary amounts of fertilizer;*

*4) Stormwater Management: Following development of the site stormwater will be treated in accordance with the terms and conditions of a NYS SPDES permit prior to being discharged from the site. The proposed stormwater management practices (detention ponds) have been designed to manage the storm water generated by developed areas. The ponds will capture, detain, and slowly release stormwater in order to prevent peak storm water discharge flow rates from exceeding pre-development rates.*

*In regions such as Sullivan County that experience high rainfall events, a combination of conventional stormwater management practices (such as the proposed detention ponds) and the proposed LID practices, likely provides the best solution for handling storm water generated by developments (Schueler, T. 2003. Impacts of Impervious Cover on Aquatic Systems. Center for Watershed Protection. Ellicott City, MD). Accordingly, in addition to the ponds, LID practices will be incorporated into the proposed project to promote water infiltration and treatment at the source of surface runoff, thereby avoiding excessive volumes of runoff. The LID measures will provide natural physical, chemical and biological treatment of the stormwater while directing it into the soil as groundwater recharge, maintaining the natural hydrological pathways of infiltration and evapotranspiration.*

**Comment 6.3-45 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** While bald eagle habitat is critical, water quality and the integrity of the lake ecosystem is also crucial both in and of itself and as the system on which the eagles depend.

***Response 6.3-45:*** *The projected impacts on water quality have been reviewed as part of the SWPPP and SPDES permitting processes. The SWPPP has been approved by the NYSDEC and, as such, long term water quality impacts are not expected to result from the Proposed Action. Based on the required State approval and reviews of the existing environmental review record, it was determined that significant impacts to water quality would not result and it was included in Section 7.0 (Issues Not to be Addressed in the DEIS) of the project scope. Refer to Response 6.0-4.*

**Comment 6.3-46 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):** Water quality, however, is inadequately addressed and it is only vaguely stated that erosion and stormwater plans will be in “compliance with State regulations” and therefore there will be limited impacts to Swan Lake itself. There is no description of these plans and how they will be enforced. Portions of the land slated for Swan Lake Estates are much higher in elevation than the lake itself and therefore present a high potential for run-off of sediment and debris. The construction of the Swan Lake Estates access road in 2005 has already caused substantial erosion and sedimentation of Swan Lake and resulted in fines imposed by the New York State

Dept. of Environmental Conservation (NYSDEC), and further construction activities were prohibited until all permits were granted.

**Response 6.3-46:** *As stated in the scoping document, the NYSDEC as Lead Agency has determined that the water quality of Swan Lake and surrounding surface water resources would not be included in the DEIS. At the time that the NYSDEC adopted the final scoping document for the project, it had the Applicant's Stormwater Pollution Plan (SWPPP) before it, and determined, based on the SWPPP and numerous site visits, that the Proposed Action would not cause significant impacts to the environment from stormwater pollution.*

*The Applicant's SWPPP was modified to incorporate comments from the NYSDEC in order to address erosion control issues identified during previous site visits by State representatives. Even though the Lead Agency concluded that stormwater runoff from the Proposed Action would not have significant adverse impacts on the environment, in an effort to eliminate even insignificant impacts, the Applicant and Project Engineer will continue to work closely with the NYSDEC until the development, including all stormwater management facilities, is complete.*

*Refer to Responses 5.0-4, 6.0-22, 3.1-37 and 6.3-25.*

**Comment 6.3-47 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):**

Furthermore, there is no mention in Section 3 of septic systems and their potential impact to Swan Lake. We are particularly concerned about the impact of septic effluent on the water quality of Swan Lake.

**Response 6.3-47:** *Refer to Responses 6.3-1, 6.3-12 and 6.3-20.*

**Comment 6.3-48 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):**

To maintain water quality and reduce run-off, prohibit the use of fertilizers and pesticides and encourage natural landscaping. "Rain gardens" should be used to capture and treat runoff from parking areas. The use of de-icing salts should be minimized.

**Response 6.3-48:** *Comment noted. In an effort maintain the natural lakeside setting, the Applicant has agreed to preserve a 100 to 150 foot buffer zone on the lake in most areas. This will moderate the runoff coming from landscaped areas of the homesites prior to any surface discharge to the lake. Refer to Response 6.3-45 regarding the use of pesticides and fertilizers*

**Comment 6.3-49 (Letter 20, Jason & Erik Kiviat, Hudsonia, February 23, 2007):**

Allocate a portion of homeowner's fees towards the control of water-chestnut through manual (i.e. non-herbicidal) methods.

**Response 6.3-49:** *Comment noted.*

**Comment 6.3-50 (Letter 21, Paul Edelstein, February 23, 2007):**

Unfortunately we have already seen the effect of same by way of the lake turning mud brown from soil runoff during a storm.

**Response 6.3-50:** *Refer to Response 6.3-2.*

**Comment 6.3-51 (Letter 24, Cora Edwards, February 26, 2007):** Various sources on eagle habitat concur on the criteria for eagle survival: clean food supply (free from toxins as Bald Eagles are at the top of the aquatic food chain), habitat protection, and freedom from human disturbance. Fraser 1988 and American Bald Eagle-Management Guidelines 2000.

As one of the primary sources of the eagles diet is fresh fish from the lake, it is an oversight that the potential negative impact on water quality has been specifically omitted from the DEIS. The AJM Eagle Plan does not consider the possible contamination of water quality and therefore to the eagles food supply due to increase pesticides, fertilizers and “nutrients” such as phosphorus, nitrates and ammonia in the individual leach fields and septic tanks as a result of the site plan configuration with additional 20 homes.

**Response 6.3-51:** *During the scoping of the project by the NYSDEC, these effects were reviewed, and as stated in Section 7.3 of the project scoping document, “the potential effects on water quality do not require further evaluation.”*

*This determination was made based on numerous site inspections, the very low density of the proposed development, the State and county codes applied to the design of septic systems, and the extensive acreage of the property that will remain undisturbed to filter the runoff from lawns, driveways and roadways.*

**Comment 6.3-52 (Letter 24, Cora Edwards, February 26, 2007):** In addition to neglecting possible contamination of food supply and water quality, the document also neglect to indicate the level increased stormwater runoff into the lake as a result of a decrease in the forest (acres noted in EAF form) and an increase in impermeable surfaces such as rooftops, parking lots, driveways and so on.

Given the percentage of slopes and inclines of the terrain in question, and the well-documented violations the project has already accumulated with respect to lack of adequate erosion controls and effective storm water prevention plans, these critical impacts on water quality should be taken into consideration. The approximate percentage of proposed project site with slopes is stated as 0-10% slope at 50% of the site; and 10-15% at 25% of the site; and 15% slope or greater at 25% of the site. Question #5 page 3 of 21 in EAF form for Kelly Bridge Road Subdivision.

**Response 6.3-52:** *In the computation of the project’s runoff and treatment volumes in accordance with TR-55 methodology and State Standards, the SWPPP, as approved by the NYSDEC, addresses development slopes, soils and cover conditions - including impervious area upon project build-out.*

**Comment 6.3-53 (Letter 24, Cora Edwards, February 26, 2007):** Page 3-7: Stormwater and erosion and sediment control plans for the proposed subdivision will comply with applicable state regulations” This is not correct, as the retention ponds have not been adequately maintained (observations from Kelly Bridge Road makes that clear). Further, road construction activities continued past the intent of the cease and desist order, to the full extent of the 5800 feet of the road as the site plan shows. This puts more pressure on having adequate erosion controls so that the pattern of mudslides into the lake would not have occurred. The tree cutting at the road site made it harder for any erosion controls to operate adequately, as there was no mud in the lake during rainstorms prior to the road construction from May 2005 - October 2005.

**Response 6.3-53:** *The road construction activities mentioned were continued to develop the stabilization and storm water conveyances necessary to redirect the runoff water to appropriate areas for storage and control. This work was done under the supervision of the NYSDEC.*

*The Applicant is working with and will continue to work with NYSDEC staff to control site erosion during the construction of the project in accordance with the approved SWPPP.*

**Comment 6.3-54 (Letter 24, Cora Edwards, February 26, 2007):** Potential loss of soil due to erosion. This is an actual negative impact as it has already happened twice, with mud slides into the lake (even with erosion controls supposedly in place) when the trees were cut. (June 2005-September 2006). However the flood of April 2004 had no mud colored water- that was before construction activities began on Kelly Bridge Road.

**Response 6.3-54:** *Refer to Response 6.3-2. The Applicant would like to point out that there were no mudslides into the lake from any location during the noted storm events. The SWPPP has been accepted by the NYSDEC and will be fully implemented during construction of the project. Once the project has been finished, all of the remaining disturbed areas will be stabilized to prevent future erosion of exposed soils from the site.*

**Comment 6.3-55 (Letter 24, Cora Edwards, February 26, 2007):** Proposed mitigation measures to offset impact that include storm water management systems to preserve water quality. These inadequate systems have failed more than once at Swan Lake, as mentioned elsewhere.

**Response 6.3-55:** *The stormwater management system failed during extraordinary rain events that occurred at an early construction stage prior to their completion. Under the supervision of the NYSDEC the gravel roadway through the property has been completed and further stabilized. The planned stormwater basin has also been installed.*

*Maintenance on the stormwater basin will be completed in accordance with discussions between the project engineer and NYSDEC. As each construction phase of the project is completed and the related disturbed areas are stabilized for controlling erosion, the opportunity for subsequent severe impacts resulting from erosion decreases.*

**Comment 6.3-56 (Letter 24, Cora Edwards, February 26, 2007):** Conservation literature cites lawns as one of the most invasive of weed monoculture, requiring pesticides and fertilizers that run off down the slopes into the lake waters, affecting the food supply of all wildlife including the eagles. To consider a lawn as a mitigation measure is contrary to that basic principle of the force of gravity.

**Response 6.3-56:** *Lawns were not presented as a mitigation measure in the DEIS.*

**Comment 6.3-57 (Letter 26, John Parker, February 26, 2007):** The applicant's own subsurface wastewater system figures lead me to conclude that failure of these systems is imminent for the leach fields. Regardless of the poor soil conditions, percolation test results were never disclosed, not currently on file in the town Planning Board records, nor were any other means made available to the public by the applicant to justify resorting to these subsurface wastewater systems. Everybody living around Swan Lake uses municipal sewer lines to address these crucial issues, because of the known damage leach fields caused to

Swan Lake prior to 1982. The failure of those earlier systems caused much harm to this man made lake.

***Response 6.3-57: Refer to Response 6.3-31.***

**Comment 6.3-58 (Letter 26, John Parker, February 26, 2007):** Given this known experience and on-site characteristics, the applicant must be made to conform to the same set of public health, safety and environmental responsibility requirements that the rest of the community around Swan Lake adheres to protect the eagle habitat. Based on the DEIS alternatives proposed, this leads to the “no build option” as the only way to avoid environmental catastrophe a few years down the road. From a civic engineering point of view, and as a certified expert on these matters, this issue cannot be swept aside and not analyzed by the DEIS for any reason-economic, or otherwise.

***Response 6.3-58: Refer to Response 6.3-31.***

**Comment 6.3-59 (Letter 26, John Parker, February 26, 2007):** Wetlands and water quality issues are inadequately described, discussed and evaluated in the DEIS. A significant component of the eagles’ habitat is the lake and surrounding wetlands, with high water quality necessary to maintain these viable ecosystems. Existing condition of these habitat features (including water quality), and subsequent potential impacts to them are not discussed in the DEIS.

***Response 6.3-59: Refer to Response 6.3-35.***

**Comment 6.3-60 (Letter 26, John Parker, February 26, 2007):** Based on typical bald eagle habitat preferences, Swan Lake is relatively small *but* the small size is perhaps compensated for by abundant food resources. Maintaining the existing water quality may therefore be critical to the long-term health and reproductive success of the bald eagles at Swan Lake.

***Response 6.3-60: Refer to Response 6.0-4.***

**Comment 6.3-61 (Letter 26, John Parker, February 26, 2007):** Water quality, however, is inadequately addressed and it is only vaguely stated that erosion and stormwater plans will be in “compliance with state regulations” and therefore there will be limited impacts to Swan Lake itself.

***Response 6.3-61: Refer to Response 6.3-47.***

**6.4 Land**

No comments were received on this topic.

**6.5 Community Character**

No comments were received on this topic.

**6.6 Aesthetics**

No comments were received on this topic.

**6.7 Noise**

**Comment 6.7-1 (Letter 4, Michael Edwards, January 22, 2007):** During the construction of the access road through the project site, we did not have one moment's peace from May to September of 2005 because of the continuous convoys of heavy trucks in the area from 7:00 am until 4:30 pm. During those months, the eagles make themselves scarce in the areas where we would normally see them. The eagles would, however, return to their normal feeding areas to the lake on weekends when the construction noise temporarily abated.

***Response 6.7-1: Refer to Response 6.1-2.***

**Comment 6.7-2 (Letter 24, Cora Edwards, February 26, 2007):** Increase in ambient noise levels: Noise reverberated for miles around Swan Lake. When there was blasting at the construction site, it could be heard from all parts of the lake, as well as the tree-cutting and access road construction. The eagles were not seen during the construction period (May 2005-October 2005) until the weekends when all was quiet again. Loss of woodland: Creation of 5800 foot access road is already a permanent negative impact that everyone around Swan Lake has witnessed.

***Response 6.7-2: Blasting has not occurred on the site. Refer to Response 6.1-2.***

**6.8 Air Quality**

**Comment 6.8-1 (Letter 11, Denny Nathanson, February 6, 2007):** "...fires burned without permits."

*Response 6.8-1: A NYSDEC Forest Ranger issued a burn permit on June 7th, 2005 to Mike Nastro.*

**Comment 6.8-2 (Letter 24, Cora Edwards, February 26, 2007):** Air pollution - limited to increased vehicles at the subdivision, but does not take into account the increased emissions in CO2 from lighting systems where there is complete dark sky now. The Town of Liberty does not have a dark sky ordinance to protect areas like this from becoming an urbanized sky cap at night and affecting the eagles nocturnal habits and sleeping patterns.

*Response 6.8-2: The proposed project does not include street lights. Electric lighting does not create CO2 emissions at the project site.*

## **6.9 Community Service and Growth Inducing Aspects**

**Comment 6.9-1 (Letter 8, Dave Colavito, February 7, 2007):** The DEIS should contain a cost benefits analysis that covers the community of Swan Lake, the Town of Liberty, and the County of Sullivan. Several people at the hearing expressed their opinion that this project would be beneficial to the area economy by virtue of increased property taxes and the increase in discretionary spending those new residents would provide. Although I understand this sentiment, I've also come to learn that assessing overall economic benefit is substantially more complex than many of us realize. The common temptation is to focus primarily on increasing the tax base and associated increased local spending activity, while neglecting the longer-term costs of the additional community services required.

***Response 6.9-1:** This type of analysis was not required in the DEIS. The project, as reviewed by the NYSDEC and the Town of Liberty, is focused on the second home market. Both lead agencies determined that the addition of 20 single family homes on private roads with individual wells and septic field, some or all of which will be seasonally occupied, will not result in significant demands on the schools, emergency, or other municipal services.*

**Comment 6.9-2 (Letter 14, Cynthia Karras, February 17, 2007):** The water run off coming from this development has cause extensive deep ravines that cost the town tax payers to pay for the repair to reclaim and fix Kelly Bridge Road.

***Response 6.9-2:** The Town of Liberty Highway Superintendent, Mr. Timothy Pellam (personal telephone conversation with the project engineer on 11/02/07) agrees that Kelly Bridge Road has historically had erosion problems in the roadside swales on either sides of the road both above and below the subject property due to cover conditions, runoff volume and slopes located uphill of the project site entrance. The proposed project has not exacerbated preexisting conditions. The stormwater basin constructed at the entrance to the project site is designed to detain peak stormwater flows on the site and release them over time. NYSDEC regulations require that the post-development peak flows leaving the site not exceed the pre-development peak flows. The detention basin is designed to meet this requirement by retaining the post-development peaks and releasing them over time. This plan, as included in the SWPPP, has been reviewed and approved by the NYSDEC. Refer to Response 6.3-2.*

**Comment 6.9-3 (Letter 14, Cynthia Karras, February 17, 2007):** How will we ever be adequately assured this new developer will abide by everything that Mr. Murolo has agreed to in order to receive these valuable DEC permits? How are we assured having received the permits from DEC that they now don't try to build the 82 houses as stated on the EAF that the zoning law of Liberty allows for?

***Response 6.9-3:** Once the proposed subdivision has been approved and submitted to the County, any changes to the site plan would require Planning Board review and approval as well as a new submission for permits to the NYSDEC.*

**Comment 6.9-4 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Fiscal impacts. These too are minimized in the scoping document. Statements to the effect of no impact on local schools or emergency services are completely undocumented and warrant more detailed scrutiny. This is the minimum required to protect the interests of the residents of the Town.

**Response 6.9-4:** *As the lead agency, the NYSDEC reviews the potential for significant impacts resulting from the Proposed Action and determines the parameters of the scoping document. After reviewing the surrounding communities and public services, then reviewing the site plan and visiting the site, it was determined that the proposed project would not have a significant impact on these community services.*

**Comment 6.9-5 (Letter 24, Cora Edwards, February 26, 2007):** "Cost of community services". The cost of road repairs by the construction vehicles have not been met by the developer and the town supervisor has not repaired Kelly Bridge Road back to pre construction standard (April 2005). The development will require more in cost of community services when all infrastructure is in than when it was a wilderness habitat area.

**Response 6.9-5:** *Refer to Response 6.9-2. The local roads are designed and built to allow trucks, including garbage trucks, delivery trucks and construction vehicles, to pass. Local road repair , including those on Kelly Bridge Road, is the responsibility of the Town. Kelly Bridge Road has been in need of repair for some time. It is the Applicant's opinion that the road has not been significantly altered due to the truck traffic traveling to and from the site.*

*Refer Responses 6.9-2 and 6.9-4 regarding community services.*

**6.10 Historical/Cultural Resources**

No comments were received on this topic.

### **6.11 Impacts on Non-listed Plants and Wildlife**

**Comment 6.11-1 (Letter 14, Cynthia Karras, February 17, 2007):** The man made lake that is known as Swan Lake is not just home to a very successful breeding pair of American Bald Eagles and their off springs. It is home to a variety of water fowls, minks, beavers, owls, hawks and at least 1 bear. The bear cave is on AJM's subdivision property.

*Response 6.11-1: The scoping document states that the project will result in the clearing of approximately 33 acres of forested land at the Kelly Bridge Road site. No significant adverse impacts to common plant species found on the site is expected from this project. Some wildlife may be displaced from the site during construction. However, the project is not expected to have a significant impact on species that are present on the site since each species is common elsewhere in the area including those listed in the comment. No bear nor sign of bear were observed on the project site.*

**Comment 6.11-2 (Letter 18, Karen Schneller-McDonald, February 21, 2007):** Impacts on protected and non-protected species. The EAF Part 2 contains a section for evaluating impacts of protected, and non-protected species. But this form has not been filled in. To respond to questions as to whether a project will have significant impacts on all of the resources identified in the EAF (as a basis for the contents of the DEIS), adequate description of habitat types (and their condition) found on or in the vicinity of the site and species (protected and unprotected) that are associated with those habitats, must be included.

*Response 6.11-2: During both the scoping process for the DEIS and the permitting process for the Wetlands Article 24 permit these topics were evaluated by the NYSDEC. The bald eagle was determined to be the only species that might be potentially impacted. A copy of the completed EAF is included in Appendix A herein.*

**Comment 6.11-3 (Letter 21, Paul Edelstein, February 23, 2007):** The eagles are but one bird species we've had the pleasure of experiencing. Herons and others also make it their home. There are innumerable turtles and it seems nearly impossible not to catch some type of fish as one has a line in the water.

*Response 6.11-3: Comment noted. Refer to Response 3.1-56.*

**6.12 Critical Environmental Areas**

No comments were received on this topic.

### **6.13 Dam Safety**

**Comment 6.13-1 (Public Hearing Transcript, February 6, 2007, John Parker):** Dam and lake management issues are not addressed. It is an issue that's been raised for many years on the record at this point. It is important everybody in Sullivan County understands flooding and dam safety issues. It is a legal obligation of the Department for managing and permitting of dams. You'll hear folks talk about how it has been addressed. Why is this relevant? Because there's a homeowners agreement which essentially says okay, Swan Lake estates folks, it's all you. I think it's great that it says that it's all you, but writing that down on a piece of paper doesn't make you a dam management expert. We ought to talk about what a dam management strategy means and on the record. We are not talking about a little piddly thing. If the dam isn't managed properly, it has ramifications for public safety but certainly about whether or not the eagle will be able to survive. The dam level has been lowered and there are consequences.

***Response: 6.13-1:*** *Currently, the Town of Liberty and the Applicant are in consultation with the NYSDEC Dam Safety Unit on the issues raised by the Unit's site inspection of the Swan Lake Dam. These consultations will result in the development of a plan that addresses public safety first and the preservation of the lake and its habitat second. If it is necessary to reduce water levels in the lake to protect human health and safety, it will be done. The concern that the Applicant or homeowner's organization will reduce the water levels to a point where the ecology of the eagles will be impacted ignores the fact that the lake is a primary selling point for the Applicant, and the homeowners who bought their houses because of the lake will not authorize any action that will deprive them of its use.*

*The consultation with the NYSDEC is independent of the environmental review process that is being conducted for the Proposed Action as dam maintenance is a SEQRA Type II Action requiring no environmental review under 6 NYCRR 617.5(b). The Applicant's obligation to maintain the dam in a safe condition exists independent of the Proposed Action. Even if the project is not approved and built, as the owner of the Lake, the Applicant will have to address dam maintenance issues. In summary, dam maintenance and safety issue are entirely unrelated to the Swan Lake Estates proposal and therefore are not mitigation for any impact related to the project, nor were they included in the final EIS scope.*

**Comment 6.13-2 (Public Hearing Transcript, February 6, 2007, Ms. Cora Edwards):** The dam safety -- we all know what happens if you don't take care of that dam. There are people here who are going to discuss tonight what happens when the dam is not maintained safely. And it is -- and when boards aren't put in and aren't taken out at the right time of year, what impact that has to the people who live there.

***Response 6.13-2:*** *Refer to Response 6.13-1.*

**Comment 6.13-3 (Public Hearing Transcript, February 6, 2007, Ms. Denny Nathanson) and (Letter 11, Denny Nathanson, February 6, 2007):** Since the establishment of Swan Lake Estates, the boards from the dam have not been removed or added properly. This dam controls the level of water for Swan Lake. The timing and placement of these boards maintain the continual existence of this man made lake. It creates space for mountain flow off of melted snow, and leaves room for rain water when excessive rains do come our way.

**Response 6.13-3:** See Response 6.13-1. The water level in the lake is maintained in part by the operation of the dam boards at the outlet, but largely by the natural processes related to seasonal precipitation patterns. Flooding of the surrounding areas is a concern of the Applicant's. Dam boards were removed in advance a forecast for a large rain event. Subsequently, the dam was inspected and issues identified by the State. The dam boards will remain out until the State has determined that the dam is safe.

**Comment 6.13-4 (Public Hearing Transcript, February 6, 2007, Mr. Evan Beck):** What potential impact is the building going to have obviously? I don't know what impact the low-water level has. But the water level has been extremely low in the last couple of years. It is a situation with the boards. I don't know if it has a negative impact. I know aesthetically it is not pleasing, but I would like some questions answered about that.

**Response 6.13-4:** Refer to Responses 6.13-1 and 6.13-3. The water level is currently a function of dam safety.

**Comment 6.13-5 (Letter 9, Evan Beck, February 9, 2007):** The level of the lake is precipitously low and a good deal of the water is now choked by water chestnuts and algae. This is also a condition that I have never observed before. It should be noted that as the owner of the lake the developer is responsible for and controls boards which regulate the flow of water out of the lake.

**Response 6.13-5:** Refer to Responses 6.13-1 and 6.13-3 regarding water levels and Response 3.1-69 regarding the water chestnut.

**Comment 6.13-6 (Letter 11, Denny Nathanson, February 6, 2007):** Since Swan Lake Estates was established the following events have occurred: Flooding of my property and County Road 142 yearly. The disappearance of lily pads and the strangulation of them by the never ending growth of water chestnuts and reeds. This as a result of mismanagement of the dam.

**Response 6.13.6:** Refer to Responses 6.13-1 and 6.13-3 regarding water levels. The control of aquatic plants would not be evaluated as part of the dam safety review. Refer to Response 3.1-69.

**Comment 6.13-7 (Letter 11, Denny Nathanson, February 6, 2007):** A road was completed without official permits, lake water levels dropped 4-6 ft. during the peak Summer season in 2005 without any approval or reason.

**Response 6.13-7:** Refer to Responses 6.13-1, 6.13-3 and 6.13-4

**Comment 6.13-8 (Letter 14, Cynthia Karras, February 17, 2007):** He purposely lowered the water table depth of more than (18 inches according to DEC), which resulted in a massive water mussel kill. This was all done during a drought period of time June - Sept. 2005. We had three times the amount of water the previous summer 2004 and he did not lower the lake. It is my contention due to the continued road building that he lowered the water table to allow his heavy earth moving equipment access so as not to sink in the mud.

**Response 6.13-8:** *The water level in the lake was lowered because heavy rains were forecasted at that time. The rains did not materialize and when the dam boards were replaced, no further rain events occurred.*

*The Applicant has not worked in any areas down by the lake, therefore drawing down the water table would not have aided the contractors in performing their work on the site.*

**Comment 6.13-9 (Letter 26, John Parker, February 26, 2007):** DEC acknowledged that the dam is a high hazard dam and that the applicant has ownership and management responsibilities. *Letter of Scott Braymer, DEC to Anthony Murolo: Dam, Safety, December 19, 2006, attached hereto as Exhibit 11.* The Town may share a portion of that responsibility. *Letter of Scott Braymer, DEC to Frank DeMayo: Dam Safety, January 8, 2007 attached hereto as Exhibit 14.* The Swan Lake Estates homeowners' covenants obligate homeowners to be responsible for the lake and dam. *Swan Lake Homeowner selected excerpt at 2 - Art. 1 (g), attached hereto as Exhibit 19.* Water levels and dam management must be addressed in the mitigation measures to satisfy SEQRA. Therefore, a viable and legally secured management plan must be put into place, and reviewed by the public, as soon as possible. Survival of the bald eagles on Swan Lake, and Swan Lake itself depend on such a plan, and its successful implementation as mitigation for Swan Lake Estates.

**Response 6.13-9:** *Refer to Response 6.13-1.*

**Comment 6.13-10 (Letter 27, Cynthia Karras, February 25, 2007):** Included in the provisions are requirements that homeowners at Swan Lake Estates, LLC are responsible for the financial support and maintenance of the dam at Swan Lake (State ID: 147D-0279 located at the intersection of County Road 15 and County Road 172). The provisions also name a local company, Nastro, as the subcontractor that will carry out such maintenance duties pursuant to this requirement.

This information is relevant to this case given the history of concerns about dam maintenance and water quality issues at Swan Lake that have been brought to the attention of the DEC between 2005 to the present day.

These issues include lowering of the lake water levels over 18" in 2005 during a drought period; lack of necessary repairs undertaken subsequent to the DEC dam repair report conducted 5/11/06; and inconsistent removal of the 'flashboards' at the dam regulating water levels at critical times throughout the year.

**Response 6.13-10:** *Refer to Response 6.13-1 and 6.13-9. The "flashboards" in the dam spillway are periodically removed and reinstalled as needed to reduce the chance of flooding. These activities have been dependent on a number of factors, including the lake's water level and the amount of precipitation forecast for any particular upcoming storm event and recently dam safety.*

**6.14 Property Values**

No comments were received on this topic.

**6.15 Effects on Use and Conservation of Energy Resources**

No comments were received on this topic.